

MISCELLANEOUS
(Research, Promotion, and Consumer
Information Programs)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS, AND NUTRITION

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 1776

FRESH LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION
ACT, JULY 19, 1989

H.R. 2187

FRESH MUSHROOM PROMOTION, RESEARCH, AND CONSUMER
INFORMATION ACT

H.R. 2257

POTATO RESEARCH AND PROMOTION ACT AMENDMENTS OF 1989,
JULY 25, 1989

H.R. 3387

PECAN PROMOTION AND RESEARCH ACT OF 1989, OCTOBER 4, 1989

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CONTENTS

H.R. 1776

FRESH LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT

JULY 19, 1989

	Page
H.R. 1776, a bill to provide for a nationally coordinated program of research, promotion, and consumer information regarding limes that is designed to expand domestic and foreign markets for limes	45
Report from U.S. Department of Agriculture.....	70
Emerson, Hon. Bill, a Representative in Congress from the State of Missouri, opening statement.....	3
Hatcher, Hon. Charles, a Representative in Congress from the State of Georgia, opening statement.....	1
Lewis, Hon. Tom, a Representative in Congress from the State of Florida, opening statement.....	4

WITNESSES

Brooks, Pal, producer/handler, Homestead, FL.....	25
Prepared statement	38
Clayton, Kenneth C., Acting Administrator, Agricultural Marketing Service, U.S. Department of Agriculture.....	5
Prepared statement	32
Fascell, Hon. Dante B., a Representative in Congress from the State of Florida.....	4
Prepared statement	29

SUBMITTED MATERIAL

American Farm Bureau Federation, statement.....	43
---	----

H.R. 2187

FRESH MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT

H.R. 2257

POTATO RESEARCH AND PROMOTION ACT AMENDMENTS OF 1989

JULY 25, 1989

H.R. 2187, a bill to enable producers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for fresh mushroom promotion, research, and consumer information, and for other purposes	165
Report from U.S. Department of Agriculture.....	184
H.R. 2257, a bill to amend the Potato Research and Promotion Act to provide improved methods of assessment that will finance a more effective marketing research and promotion program and provide for a more effective consumer information program designed to expand markets for potatoes	188
Report from U.S. Department of Agriculture.....	194
Emerson, Hon. Bill, a Representative in Congress from the State of Missouri, opening statement.....	81

IV

	Page
Hatcher, Hon. Charles, a Representative in Congress from the State of Georgia, opening statement.....	75
Panetta, Hon. Leon E., a Representative in Congress from the State of California, opening statement.....	82
Prepared statement	85

WITNESSES

Beelman, Robert B., professor of food science, College of Agriculture, Pennsylvania State University.....	118
Prepared statement	158
Ciarrocchi, James, president, American Mushroom Institute	94
Prepared statement	132
Clayton, Kenneth C., Acting Administrator, Agricultural Marketing Service, U.S. Department of Agriculture.....	89
Prepared statement	126
Cranney, Michael, president, National Potato Council	113
Prepared statement	145
Dresser, W. Donald, executive vice president, United Foods, Inc.	115
Prepared statement	150
Kazemi, Shah, president, Monterey Mushrooms, Inc.	102
Prepared statement	140
Leighton, Kirk W., president, Camsco Produce Co., Campbell Soup Co.....	108
Prepared statement	142
Schulze, Hon. Richard T., a Representative in Congress from the State of Pennsylvania.....	78
Prepared statement	124
Stallings, Hon. Richard H., a Representative in Congress from the State of Idaho.....	76
Prepared statement	122
Zensen, Dennis, chairman, Mushroom Council.....	100
Prepared statement	135

SUBMITTED MATERIAL

American Farm Bureau Federation, statement.....	163
---	-----

H.R. 3387

PECAN PROMOTION AND RESEARCH ACT OF 1989

OCTOBER 4, 1989

H.R. 3387, a bill to provide for the establishment of a coordinated program of promotion and research designed to strengthen the position of the pecan industry in the marketplace, to maintain and expand foreign and domestic markets and uses for improved and native pecans and pecan products, and for other purposes	225
Emerson, Hon. Bill, a Representative in Congress from the State of Missouri, opening statement.....	198
Hatcher, Hon. Charles, a Representative in Congress from the State of Georgia, opening statement.....	197

WITNESSES

Christiansen, J.W., Jr., member, board of directors, National Pecan Shellers Association.....	209
Prepared statement	223
Dietze, Errol John, president, Texas Pecan Growers Association	205
Prepared statement	220
Geer, Bucky, vice president, Federated Pecan Growers Association	203
Prepared statement	218
Haley, Daniel D., Administrator, Agricultural Marketing Service, U.S. Department of Agriculture	198
Prepared statement	212

FRESH LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT

WEDNESDAY, JULY 19, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS, AND NUTRITION,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 1302, Longworth House Office Building, Hon. Charles Hatcher (chairman of the subcommittee) presiding.

Present: Representatives Espy, Sarpalius, Emerson, Lewis, and Herger.

Also present: Representative E (Kika) de la Garza, chairman of the committee.

Staff present: Fred J. Clark, associate counsel; Glenda L. Temple, clerk; Julia M. Paradis, Dean Mitchell, Anita R. Brown, and Lynn Gallagher.

OPENING STATEMENT OF HON. CHARLES HATCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. HATCHER. Good afternoon. Welcome to the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition. This hearing is on H.R. 1776, The Fresh Lime Research, Promotion, and Consumer Information Act, introduced by Congressman Fascell of Florida.

Since 1960, I understand the State of Florida and its lime producers have operated under a Federal marketing order which establishes a program for advertising, research, and promotion. In addition, that marketing order establishes minimum quality standards.

It is authorized by the Agricultural Marketing Agreement of 1937, which does not allow for assessments on imported limes and, at present, nearly half of the limes consumed in the United States are imported. Since imported limes benefit from the generic advertising, research and promotion activities funded through the collection of assessments, it seems to most people only fair that importers contribute to the cost of these activities. That is what this resolution would do. H.R. 1776 would authorize the establishment of a marketing program that would assess imported limes at the exact same rates as limes grown in the United States.

I look forward to hearing from our witnesses today and working with the lime industry in securing passage of this legislation.

[H.R. 1776 and the report from the U.S. Department of Agriculture appear at the conclusion of the hearing.]

Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman.

I concur in your statement. I would ask unanimous consent to have a statement of my own immediately following your statement. Thank you.

[The statements of Mr. Emerson and Mr. Lewis follow:]

STATEMENT OF THE HONORABLE BILL EMERSON

SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS AND NUTRITION

JULY 19, 1989

THANK YOU MR. CHAIRMAN. OVER THE PAST THIRTY YEARS THE CONGRESS HAS APPROVED SEVERAL RESEARCH AND PROMOTION PROGRAMS, DESIGNED AND IMPLEMENTED BY THE PRODUCERS THEMSELVES. THESE PROGRAMS PROVIDE PRODUCERS WITH THE STRUCTURE TO ESTABLISH AND TO FUND PROGRAMS DESIGNED TO PROMOTE RESEARCH, SALES AND CONSUMPTION OF THEIR PRODUCTS. I SUPPORT THESE TYPES OF RESEARCH AND PROMOTION PROGRAMS AND BELIEVE THAT THEY ARE A MEANS FOR PRODUCERS IN THE UNITED STATES TO NOT ONLY PROMOTE THEIR PRODUCTS; BUT ALSO TO FUND RESEARCH PROGRAMS DESIGNED TO INCREASE USES OF THE VARIOUS PRODUCTS AND TO ADVISE CONSUMERS OF THE BENEFITS OF THE PRODUCTS.

TODAY OUR HEARING IS ON THE BILL INTRODUCED BY THE GENTLEMAN FROM FLORIDA, MR. FASCELL. H.R. 1776, IS A BILL TO PROVIDE FOR A NATIONALLY COORDINATED PROGRAM OF RESEARCH, PROMOTION AND CONSUMER INFORMATION REGARDING LIMES. THE PURPOSE OF THE BILL IS TO EXPAND DOMESTIC AND FOREIGN MARKETS FOR LIMES.

THROUGH H.R. 1776, PRODUCERS AND HANDLERS OF LIMES HOPE TO JOIN THE EVER-GROWING NUMBER OF PRODUCERS COMMODITIES THAT HAVE IMPLEMENTED RESEARCH AND PROMOTION PROGRAMS. SUCH TYPES OF COMMODITIES INCLUDE BEEF, COTTON AND DAIRY. OTHER COMMODITIES SEEKING TO ESTABLISH THESE PROGRAMS ARE SOYBEANS, MUSHROOMS AND PECANS.

I AM PLEASED THAT THE SUBCOMMITTEE WILL HAVE AN OPPORTUNITY TO HEAR FROM CONGRESSMAN FASCELL AND REPRESENTATIVES OF THE LIME INDUSTRY FROM FLORIDA.

THANK YOU MR. CHAIRMAN.

Opening Statement of Hon. Tom Lewis, a Representative in Congress
From the State of Florida

Mr. Chairman, I want to thank you for calling this hearing today regarding H.R. 1776, legislation that provides for a national research and promotion program which will allow U.S. lime producers to expand their domestic and foreign markets.

I would like to welcome my esteemed colleague from the 19th District of Florida, Chairman of the Foreign Affairs Committee, Mr. Fascell. It is an honor to cosponsor this legislation with Mr. Fascell.

The legislation that we are addressing today is solely meant to create a program that will assess domestic producers as well as lime importers, the same amount. Importers currently take advantage of the research and promotion that is provided under the marketing order on limes, that has been in place since the 1960's. Since importers produce roughly half of the limes used in the United States, this legislation will even the playing field in regards to research, promotion and consumer awareness.

Mr. Chairman, I would like to state information that I am sure my colleague Mr. Fascell will reiterate in his testimony. This legislation is by no means meant to be a trade barrier for foreign lime producers.

Foreign producers will be assessed the same amount as domestic producers, up to one cent per pound. The funds generated from the assessment would be between \$5 million and \$7 million a year. These funds will be used to continue current research of lime drop disease, as well as necessary research in the promotion and consumer areas.

Again, I welcome Mr. Fascell, as well as our two lime producers from Homestead, Florida—Mr. Pal Brooks and Mr. James Humble. I look forward to all of your testimony this afternoon.

Mr. HATCHER. Without objection.

Our first witness today is Representative Fascell from Florida. We would like to welcome you to the subcommittee and would be glad to make your written statement, if you have one, a part of the record and hear from you in any manner in which you desire.

STATEMENT OF HON. DANTE B. FASCELL, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF FLORIDA

Mr. FASCELL. Mr. Chairman, Mr. Emerson, I thank you very much. I will submit my statement for the record.

I apologize for being a few moments late. I was at another hearing. It seems like all of us have a little too much to do these days, but I appreciate your patience. I also thank you for scheduling these hearings on this important bill.

The lime industry has changed considerably in the last several years since 1972, when we started with about 1,800 metric tons of imports. We are now talking about 30,000 tons. At one time, Florida was the major supplier for limes. Now we find that there are many, many places that can provide the limes.

But nevertheless, the market keeps growing. The bill is aimed at improving the market capability. We found that the present program in Florida has been immensely successful. In other products where, under marketing orders, they have done the same thing that this measure proposes, they have found that in no way does the charge impact on the market share or market expansion. As a matter of fact, it has done exactly what the program was designed to do, and that is to increase expansion of the market but distribute the load on a fair basis.

We believe that everybody in this business will see the virtue of this, and there will be no discrimination and no distinction made between domestic and imported limes and the benefit of the market will accrue to both.

We hope that in your judgment the committee will consider, along the lines of your own statement, Mr. Chairman, and that we can move this legislation forward and hope to improve the capability of a very important agricultural sector of our economy.

[The prepared statement of Mr. Fascell appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you for that statement, Mr. Fascell.

Most of the limes that are grown in the United States are grown in your district, I guess, or nearby?

Mr. FASCELL. Nearby or very close, yes, Mr. Chairman. We have both the Persian limes and the key limes and others.

Mr. HATCHER. I do not have any further questions. Mr. Emerson.

Mr. EMERSON. I have no questions and no problem with the proposal. I think this is a good approach to market development. A number of other commodities have it and I am glad to join in support of the bill.

Mr. FASCELL. I thank you very much for myself and for my colleague, Mr. Lewis, and for the rest of us who are interested in this legislation.

Mr. HATCHER. Thank you for your testimony.

Our next witness will be Dr. Kenneth Clayton, Acting Administrator of Agricultural Marketing Service at the USDA here in Washington.

Dr. Clayton, we thank you for being here and look forward to hearing your testimony. Your entire written statement will be made a part of the record and we invite you to proceed through reading it, or through a brief statement, whichever you prefer.

**STATEMENT OF KENNETH C. CLAYTON, ACTING ADMINISTRATOR,
AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF
AGRICULTURE, ACCOMPANIED BY CHARLES R. BRADER, DI-
RECTOR, FRUIT AND VEGETABLE DIVISION**

Mr. CLAYTON. Thank you very much, Mr. Chairman. I will try to confine my remarks today to what I believe to be some of the more important points we would like to make. I do appreciate, however, having my full remarks submitted for the record.

We do appreciate the opportunity to appear before you and the committee today to present the Department's views on H.R. 1776. Accompanying me today is Charles Brader, who is the Director of our Fruit and Vegetable Division. He will be the gentleman who will be responsible for implementing this particular proposal, should it be enacted.

Let me start by saying the Department has no objection to the enactment of H.R. 1776, if it is amended to address a few concerns which are outlined in the Department's report to the committee. Many of the changes which we recommended for your consideration are designed to facilitate the administration and enforcement of H.R. 1776.

This proposal, if enacted, as you have already noted, would enable domestic producers, as well as producer-handlers, and importers of fresh limes to develop, finance, and carry out a nationally coordinated program of lime promotion, research, and consumer information.

The program, which would be administered by an 11 member lime board, composed of 7 producers, 3 importers, and 1 public representative, is expected to generate up to \$2 million per year based on an assessment rate of not to exceed \$.01 per pound of fresh limes. The bill contains a provision for a delayed referendum, with such referendum to be conducted no later than 2 years after implementation of the order. Approval of the order would require a simple majority of those producers, producer-handlers, and importers voting. No provision is included for assessment refunds under H.R. 1776.

H.R. 1776 also authorizes the Secretary to deal directly with violators of the act by assessing civil penalties of not more than \$5,000 per violation as well as issuing cease and desist orders for violations of any order or regulation.

Mr. Chairman, as you are aware, the Department currently oversees national commodity promotion and research programs for a number of commodities, beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons and wool, lamb and mohair, to be precise. These national programs which focus on generic commodity research and promotion devote in excess of \$300 million per year to increase public and commercial awareness of the products.

As has been indicated already today, limes are produced predominantly in Florida; however, California also has significant production of limes. In 1988, about three-quarters of domestically produced limes were shipped from Florida and about 25 percent were shipped from California. About 15 percent of Florida limes sold for fresh, moved in intrastate commerce within the State of Florida. We do not know what the percentage of intrastate shipments in California were, however.

Under the proposal before us today, such intrastate shipments would be exempted from assessment.

The major source of imported limes is the country of Mexico, which supplied something over 41,000 metric tons or about 94 percent of the limes which were imported into the United States in 1988. Limes are imported from Mexico throughout the year, with the largest quantities arriving in August, September, and October. Small amounts of limes are also imported into the United States from the Bahamas, Honduras, and Costa Rica. In 1988, as was indicated earlier, imports provided about half of total fresh lime consumption in the United States. The total number of importers at this stage, however, is not yet determined.

Let me move to Department recommendations, if I could. To facilitate the administration and enforcement of H.R. 1776, the Department recommends a number of changes which would conform the bill to departmental policy.

Turning first to the issue of refunds and referenda, H.R. 1776 makes no provision for refunds or an up front referendum. In the absence of either of these provisions, the Department strongly believes that provision is needed for refunds of assessments occurred on sales prior to the referendum. Either direct refunds on a monthly basis, as is typical of many of our programs, or a provision for escrowing funds to make a one-time refund could be employed.

We believe, in the interest of due process, that it is important, until the referendum is held, that provision be allowed for refunds.

The second issue which we would like to direct your attention to is the question of reimbursement of costs to the Department. H.R. 1776 provides for reimbursement to the Secretary for costs incurred by the Secretary after an order has been issued and for expenses incurred by the Secretary for the conduct of any referendum under the act, except, in the case of the referendum, salaries of Government employees are excluded.

The Department believes that it should also be reimbursed for all startup costs incurred prior to the issuance of the order, including salaries of Government employees. Although the Department has previously absorbed salary and some other costs associated with the startup of similar programs, the growing number of these types of programs requires us to redirect staff resources from other critical program areas to handle the heavy volume of work associated with their implementation. We can no longer continue to absorb these costs. We believe such costs should be borne by the affected industries, not by the general public.

Another issue has to do with the time constraints which are included within the proposal having to do with the procedural aspects of implementing a research and promotion order. Section 4(d) of the proposal requires the Secretary to publish a proposed order not later than 30 days after receipt of such proposal from the industry, and to issue such final order after notice and opportunity for public comment.

The Department would strongly suggest that a 60-day requirement would be more reasonable and attainable than the 30-day requirement which is now included in the proposal.

Another area which I would like to focus on has to do with the prohibition on the use of the funds which are collected under a research and promotion program such as this one. Departmental policy requires that producer assessment funds may not be used for purposes of influencing any legislation or any governmental policy or action, except in recommending to the Secretary any amendments to the order.

The Department feels strongly that the prohibition contained in section 5(g) of the proposal should be revised specifically to include legislation and to conform the statutory language to this long-standing, and what we believe to be, important policy.

Another issue is the relationship between this proposed research and promotion order and the ongoing Federal marketing order program for limes. Certain provisions in H.R. 1776 concerning assessments and referenda procedures reference comparable requirements with respect to any Federal marketing order regarding limes that is in effect before the date of the enactment of this act. Of course, that is fairly directed to Federal Marketing Order No. 911 which is in place for Florida limes.

Section 6(2) of the proposal before us provides that with the Secretary's approval, only the portion of the Lime Board's assessments that are above the amount assessed under the Federal marketing order would be required for those regulated under the research and promotion order.

As we see it, however, this provision would have no practical effect, since only lime producers, producer-handlers in their capacity as producers, and importers would pay assessments under the

proposed program, and only handlers would be assessed under the Federal marketing order. Therefore, handlers are the focus of the Federal marketing order, producers are the focus of the research and promotion order.

It seems to us that there is some question as to why this provision is even needed in this proposal, because it is addressing different audiences.

In addition, section 10 provides for a referendum on the order, on the research and promotion order, whenever a referendum is conducted for a Federal marketing order. The Department strongly believes it is inappropriate to relate the administration of a free-standing research and promotion program which is national in scope to the operations of the regional Federal marketing order, because of the differences in the nature, the scope, and the functions of the two programs.

One final issue I would like to raise with you has to do with the issue of intrastate shipments. If you will recall a few moments ago, I noted that there is some volume of product which moves within State, in the case of Florida and in the case of California. As the proposal is currently configured, those shipments would be exempted from a requirement for assessment.

The Department recommends deletion of that exemption for intrastate shipments because we believe the exemption is not justified and would confer an unwarranted advantage on intrastate shipments of fresh limes under the proposed national research and promotion program.

Finally, Mr. Chairman, let me just for the record note our estimates of the costs which might be associated for this program. Our estimate of startup costs, which we believe should be reimbursed to the Department, for the promulgation of the order and the conduct of the referendum would amount to about \$50,000. Annual costs thereafter for administration and oversight activities would approximate around \$50,000 as well.

Mr. Chairman, we look forward to working closely with you, your committee members, as well as with the industry in putting together a viable, workable, producer/importer financed program which will enable the lime industry to advance its position in the marketplace.

This concludes my statement. I would be happy to respond to any questions.

[The prepared statement of Mr. Clayton appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you very much, Dr. Clayton.

I looked at the reference in your statement to the resolution and there is an exemption for intrastate shipments of limes. How does that relate to the present practice, under the existing marketing order? How are intrastate shipments treated there?

Mr. CLAYTON. They may possibly be exempt under the marketing order, but I think I would have to argue that this is a different statute that we are talking about putting into place. I think there is something of an equity concern if a certain product is exempted from the assessment. While I am not a trade expert, I would suggest that we would need to think carefully about the international

implications if some portion of domestic production were, in fact, exempted.

One of the critical tests, as it were, which often apply in a GATT context relates to the issue of national treatment. That is, equal treatment across countries. As I say, I am not a trade expert, but I would tend to think that there could be some concerns raised if part of the production within the United States were exempted from assessment while imports were fully assessed.

Mr. HATCHER. I want to be sure I understand where limes are grown in this country. From some things I have read about 75 percent from Florida and 25 percent from California does not quite fit with what I have been told is the actual fact, and that is very few are grown in California and that 25-percent figure might be the percentage that is shipped from California, and that might be almost totally Mexican limes, as opposed to California limes.

Could you tell us about production in California?

Mr. CLAYTON. Consulting with my colleague, I am told that the data upon which we draw do, in fact, represent shipments. However, that shipment data is disaggregated by source. That is, imports are noted separately from domestically produced product, so that we are reasonably confident that the 75 percent-25 percent breakdown which I indicated in my testimony does fairly well fit the facts.

Mr. HATCHER. Do you mean the production facts?

Mr. CLAYTON. Yes.

Mr. HATCHER. The Ag Yearbook, as I understand it, indicates that all the limes, or almost 100 percent, are grown in Florida, that are produced in this country.

Mr. CLAYTON. I am not sure I know the precise answer to what appears to be an inconsistency. I am fairly confident of the data that our market news operation picks up.

It is sometimes the case with aggregate statistics that for commodities which are relative to others and perhaps, produced in smaller volumes that the sampling procedures which are used to develop the data may show the situation somewhat differently. The yearbook contains only NASS (National Agricultural Statistical Services) crop estimates and NASS does not collect crop information on California.

Mr. HATCHER. Do you know where the limes are produced in California?

Mr. CLAYTON. I am told that they are generally in the citrus producing areas of California, central valley and southeast, Ventura County, Orange County, Riverside County, San Diego County, and Santa Barbara County.

Mr. HATCHER. This may not be critical to passage of this resolution, but it is something I think we ought to try to nail down, so that we do understand exactly what we are dealing with. We will follow up on that with your Department.

Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman.

Is there a certain list of provisions that the Department wants to have contained in all research and promotion bills? Certain general standards, certain criteria that you would include in all bills?

Mr. CLAYTON. I guess there is not a separate document, per se, which contains such a list. Certainly, in testimony which I gave last week on the Senate side, we did include a general list of considerations that we think are important in structuring this type of legislation.

Mr. EMERSON. Does the Department believe that in all instances in which there is no provision for refunds of assessments, that there should be an up front referendum?

Mr. CLAYTON. I guess the simple answer would be yes. In fact, we are concerned very much about due process for the producers who will be making payment into these programs. It seems to us that either producers need to have a say immediately as to whether or not they choose to contribute to the program, or if it is determined that it is preferable for whatever set of reasons to have a delayed referendum, that provision be made to, in fact, provide refunds or at least the possibility of refunds through some type of escrow arrangement.

Mr. EMERSON. Would you describe some of the initiatives under the various research and promotion programs that have been funded by these assessments?

Mr. CLAYTON. Of course, as I mentioned, there are a number of these programs in place. I suppose some of the bigger programs which receive maybe a bit more visibility, are programs for example that the dairy industry and the beef industry and the pork industry have. A variety of activities are conducted under those programs.

Certainly, we can provide any additional information on specifics that you like, but I would just say that it covers a variety of promotional activities, making consumers aware of how they might better use the product. There also is research done on alternative product formulations, these kinds of things. Certainly, we would be happy to provide as much detail as you would like.

Mr. EMERSON. I would appreciate it if you would provide such a list for the record, with a description of some of the projects that have been initiated under the various orders.

[The information follows:]

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

LISTING OF RESEARCH AND PROMOTION PROJECTS
DEVELOPED UNDER COMMODITY RESEARCH AND PROMOTION PROGRAMSAmerican Sheep Industry Association

1. Conducts a "Tall Timber Tour" of sheep ranches in the Rocky Mountain area for key decision-makers in various segments of the wool industry, including fashion editors to improve communications within the industry.
2. Regional lamb merchandising experts, through direct contact with key officials in retail grocery chains, provide current information on lamb cutting and merchandising and seek additional space for lamb at the retail counter.
3. Conducts studies to determine cutability and lean characteristics of lamb production in the United States.
4. Conducts consumer attitudinal studies to assist in establishing new advertising positioning for Fresh American Lamb.
5. Conducts advertising for both lamb and wool with emphasis on lean lamb and targets new products made exclusively with American wool in wool advertising.

Mohair Council of America

1. Conducts National Product Publicity through the development and dissemination of press kits and photos concerning mohair fashions.
2. Conducts generic advertising in trade publications to stimulate interest of mills, designers, and manufacturers in the mohair fiber.
3. Conducts a series of fashion design competitions targeting participation by senior level design students at the leading fashion design schools in the United States.
4. Conducts cooperative advertising with domestic and foreign users of mohair including participation with a Dutch velour manufacturer to promote the use of mohair velour to interior design firms.
5. Develops and maintains a mohair yarn and fabric library in the New York promotional office which provides mohair users with a unique educational resource.

Cattlemen's Beef Promotion and Research Board

1. Research on "Modification of Beef and Beef Products to Minimize the Serum Cholesterol Raising Potential of Beef" conducted by the University of Texas--Southwest Medical Center.
2. Research on Beef Cookery Guidelines for Food Service conducted by Texas A&M University to enhance the positioning of beef in food service and update guidelines.
3. Developed a kit entitled "A Change of Plate" which provides dietitians with the tools to teach health conscious people that beef can be a part of a healthy diet and emphasize how to cut out the fat.
4. Funded a U.S. beef promotion campaign in Japan in conjunction with the U.S. Meat Export Federation using various media and directed at Japanese consumers to stimulate demand for U.S. Beef.
5. Funded the "Real Food for Real People" media campaign to emphasize beef's taste appeal and contemporary image through TV, radio, and magazine advertising.

National Pork Board

Food Service Promotion

Nine ad insertions were run in food service magazines, reaching 88 percent of all operators of which 38 percent of those requesting information adding a new pork entree within a 6-month period at an estimated total program cost of \$410,000.

Advertising

The 1988 Pork "The Other White Meat" consumer advertising campaign (spot TV and consumer magazines) created 350,000,000 gross impressions reaching approximately 22-25 percent of U.S. consumers, costing pork producers \$6 million.

Consumer Affairs

Peggy Fleming reached approximately 7.5 million consumers nationally with her new "Training Table Tactics" message via TV, magazine, newspaper, and radio interviews at a cost of \$175,000 or about 45 consumers per each penny spent.

Merchandising

The 1988 Pork and Kraft Bull's-Eye Tie-in program promoted America's Cut and Bull's-Eye sauce to 22 marketing areas (over 14,000 stores) with retail ads, samples, and coupons at a cost of \$110,000.

The Grand Slam promotion merchandising program tie-in with the Baseball All-Star game was a national program covering a 3-month period in 30,000+ supermarkets featuring Pork--The Other White Meat and the National Pork Producers Council's new trademarked "Center Cut Pork Chop, America's Cut" at a cost to producers of \$247,000.

Research

Pork industry checkoff funds research and education programs which help producers become more efficient and improve the quality of their products to the benefit of consumers through swine health, nutrition, genetics, management, meat science engineering, and quality assurance.

Foreign Promotion

Direct appeal to Japanese consumers utilizing one or more of the following: U.S. pork seminar, meat extravaganzas with pork industry spokesperson, Hotel Restaurant Institute "America's Cut Promotion," pork video series, pork gift pack retail store promotion, and "Chef's Prime" cut promotion.

National Potato Board

The Potato Board funded a Usage and Awareness Study to determine consumer attitude towards potatoes and the usage of potatoes.

Developed and distributed first nutrition label for produce and distributed this information directly to consumers through: point-of-sale, opinion leaders such as nutritionists, food editors and educators.

Educational tools developed include, film entitled Balancing Act (distributed to 12,000 schools each year), teachers kits for high school and elementary school students and Dr. Spud, a new teaching program for elementary schools.

A nutrition education program going back over the past 15 years is still operating using print advertising in major magazines. The Board has won numerous awards for advertising excellence.

Beginning in January 1989, the Board began to emphasize that convenience and nutrition can be promoted together in the marketing of potato products.

National Cotton Board

Developed the module builder which is a device that packs harvested seed cotton into 10-15 bale blocks. The seed cotton can be stored as a module for several months without loss of quality.

Developed the "Seal of Cotton", the logo of the Cotton Research and Promotion Program, which identifies products produced in the U.S., made predominantly of cotton and meet strict performance standards.

Developed the one-hundred percent cotton permanent press finish. The finishing process that gives 100 percent cotton garments and home furnishings permanent press qualities was developed under the program to meet consumer demands for care-free fabrics. The process has been recently updated to eliminate residues of suspected carcinogens that were left in the fabric from the earlier finishes.

"Take Comfort in Cotton" has been the theme of the program's promotion efforts.

Program funds were used to develop 100 percent cotton yarns that could be knitted into sweaters. The introduction of the 100 percent cotton sweater has expanded cotton's market into an area that until recently was dominated by synthetics.

American Egg Board

Funded study, in collaboration with USDA, to determine current cholesterol and other nutrient values in the average large egg.

Developed nutrition education computer program "In Search of Eggscellent Nutrition" for school children, grades 6 through 10.

Developed cookbooklet "Eggs . . . Basics and Beyond" for consumers and food editors of major magazines and newspapers.

Developed a variety of brochures and other informational pieces on general nutrition and the relationship of dietary cholesterol and heart disease. All such materials were reviewed by a scientific review panel and USDA.

Collaborated with SYSCO Corporation, the Nation's largest foodservice distributor, on a "Golden Egg" promotion program. Included were customer recipe contests, educational sales meetings, sales contests, and food show egg promotions.

National Dairy Board

Cheese advertising campaign for FY 1989 - Theme: "Don't Forget the Cheese".

"Genetic Engineering of Cholesterol-Reducing Dairy Starter Cultures," - research by Susan K. Harlander, Ph.D., University of Minnesota.

"Development of Superior Whipping/Foaming Agents Using Milk Protein Blends," by John E. Kinsella, Ph.D., Cornell University.

"Generation and Fate of Natural Anti-Tumor Promoters in Milk," by Alfred H. Merrill, Jr., Ph.D., Emory University.

"Hypertension Education & Awareness Program Addressing The Calcium/High Blood Pressure Link" - Aimed at primary care physicians - research by National Kidney Foundation.

HONEY RESEARCH AND PROMOTION PROGRAM PROJECTS

RESEARCH

1. The Honey Board conducted the following extensive market research before engaging in any promotion efforts: a consumer usage and attitude study, a retail distribution study, and a foodservice research study.
2. The Board has utilized food technology consultants to explore and catalogue the many industrial uses of honey. This material has been disseminated throughout the food manufacturing industry, and a Honey Hotline toll free number for additional technical information is maintained by the Board.
3. New product formulations are tracked by the Board, and new uses of honey are reported to the industry. Ideal formulations for certain products have been researched by the Board to maximize and optimize the use of honey.

CONSUMER EDUCATION

1. An educational videotape, "Busy as a Bee", is being prepared to educate schoolchildren about bees and honey. It, and other supportive materials, will be distributed through USDA's "Ag in the Classroom" network.
2. In conjunction with the Agricultural Research Service of USDA and Cornell University, the Board conducted a study of the benefits of the beekeeping industry as far as pollination of U.S. agricultural crops. Extensive media coverage resulted.

PROMOTION

1. The Board has conducted magazine advertising campaigns with such co-sponsors as Lipton Herbal Teas and Bisquick. In the fall, the latest cooperative advertising campaign will pair honey with Betty Crocker Muffins. Next year it is anticipated that solo magazine advertising will be conducted, but for the present co-op ads allow the Board to stretch its advertising dollar.
2. The Honey Board's Standards of Identity program enables food manufacturers to use the Board's trademarked honeybear logo when a product's formulation meets the Board's standards for content of honey. Ralston-Purina has reformulated its Honey Graham Chex cereal so that over half of the sweeteners it contains will be honey. Thus, this product will carry the honeybear logo which the Board hopes will become recognized as a seal of quality.

Mr. EMERSON. Finally, has the Department conducted any research on these research and promotion programs in general. If you have, do you have any conclusions? Are they effective? Is there a relationship between the funds invested in promotion programs and the sales of the commodity?

Mr. CLAYTON. That is the critical question, is it not?

Certainly, in the case of dairy, it is probably the easiest to point to. There, in fact, is a requirement within the dairy research and promotion program that that type of research be undertaken. As a part of the annual report that we provide to Congress on the Dairy Program, we do provide some assessment of the impact, if you like, which the dollars spent under that program have had.

I think the conclusion drawn, at least under dairy, is in fact that there is a positive impact and it obviously depends on the circumstance as to how significant or large that impact might be.

I guess I might say, as a general statement, that this is an area where more work needs to be done. Having some connection with the research community, I am well aware that there are any number of difficulties in conducting that work, a variety of measurement questions, gathering the right kinds of data, a lot of technical issues which make it a nontrivial exercise but I think an important one.

Certainly, as I say, under dairy we do research there. There also is a research community out among the land-grant universities, as a matter of fact, where a number of researchers are looking at generic advertising. A lot of that work is still early on, so I do not believe that there is perhaps a lot of definitive results to share with you. Certainly, we would be happy to advise committee staff as to some of the latest research and who the researchers are and to put them in touch, if you like.

[EDITOR'S NOTE.—Additional material submitted by the U.S. Department of Agriculture follows:]

The attached publication, "Generic Promotion of Agricultural Products" by William N. Blisard and James R. Blaylock, was released in July 1989 by USDA's Economic Research Service. This publication also addresses other research which has been conducted in this area, and the authors of that research.



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Service

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Generic Promotion of Agricultural Products

Balancing Producers' and Consumers' Needs

William N. Blisard
James R. Blaylock

Abstract: *Farmers sponsor generic advertising campaigns to expand the total market for their commodity. Generic advertising promotes a type of food, such as milk, beef, or orange juice, rather than a specific company's brand. Sales promotions may help increase consumer demand and raise—or at least stabilize—commodity prices. If producers can improve their domestic markets through generic advertising, some pressure on price supports and other traditional farm policy tools could be relieved. The growth in promotions has spurred public debate about the costs and benefits for producers, and the effect on food budgets and choices for consumers. Do producers gain from advertising, and if so, do consumers pay the price in their food bills?*

First Generic Promotion Was 50 Years Ago

Since the Florida State legislature enacted the first promotional program funded by producers 50 years ago, the number of promotions has grown steadily. The oldest Federal law authorizing research and promotion programs is the National Wool Act of 1954. Congress has reauthorized the wool promotion program in each farm act since then. Cotton research and promotion started in 1966. Legislation authorizing potato and egg programs was passed in the 1970's.

Today, 312 Federal- and State-legislated promotional programs cover over 80 farm commodities. This figure does not include 39 State-legislated programs for beef and pork promotion that are now linked to Federal checkoffs. Ninety percent of all U.S. producers contribute money to farm commodity promotion and

How Can Policymakers Balance the Concerns of Producers and Consumers?

Producers

- Do generic ads boost sales? Which producers gain?
- Do producers have a choice about enrolling in promotion programs?

Consumers

- Will advertising raise prices?
- Can advertising help educate consumers?

market development activities through State and/or federally legislated programs.

Policymakers considering legislation to authorize or alter generic promotions must balance the competing needs of producers and consumers. Legislation at the State or Federal level may authorize funding of promotions through checkoffs or assessments on producers, specify that producers receive matching funds from the Federal or State Governments, or authorize the creation of a marketing order (regulatory program affecting price, quality, and supply of a product). The Federal Government recently has moved toward mandatory checkoff programs that require producers to pay assessments before they vote on whether to continue or terminate the program.

New national promotional programs for dairy, beef, and pork began generating more than \$300 million in producer money each year beginning in 1983. These three promotions represent a push toward creating large national programs. Increasing sums of producer money now go to domestic market promotion. As funding has grown, producers have been given less discretion in determining whether to participate in generic promotional programs, especially at the Federal level.

Producers contribute more than \$530 million a year to promote their farm products both here and abroad through Federal- and State-legislated checkoffs or marketing order programs. Voluntary, nonlegislated actions or farmer cooperatives generate over \$30 million more in producer monies. Sizable public funding also goes to farm commodity promotion at home and for foreign market development. While funding for promotion is rising, the amount spent is still small relative to commodity value. The national pork checkoff program, for example, generated approximately \$22 million in its first year of operation compared with farm sales for pork of \$11 billion.

Nearly 90 percent of the \$435 million spent for research and promotion in 1986 was aimed at domestic markets (table 1). Dairy and meat had the highest spending levels (fig. 1). Field crop programs spent the

most on international market development. Total expenditures for domestic advertising and promotion, as well as for research, have climbed in the 1980's (table 2). Between 1979 and 1986, producer expenditures for domestic promotion nearly doubled on a constant-dollar basis (adjusted for inflation). Foreign market development and research rose a bit less.

How Do Generic Promotions Operate?

A wide variety of mechanisms are used to set up and run generic promotion programs (table 3). Either the Federal or the State Government can authorize collections. Once they are authorized by law, programs can be funded and managed entirely by producers (free-standing operations), or tied to U.S. Department of Agriculture (USDA) regulatory programs (marketing or-

Figure 1
Dairy leads spending on domestic generic promotion, 1986

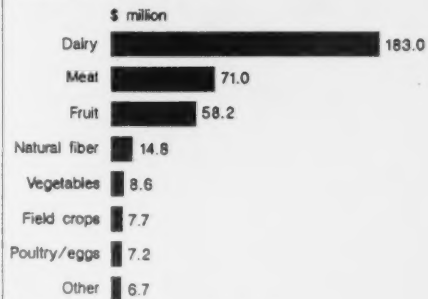


Table 1—Spending on research and promotion approaches half-billion-dollar mark, 1986

Commodity	Ads aimed at domestic markets	Ads aimed at overseas markets ¹	Research on product development	Total ²
<i>Million dollars</i>				
Dairy	183.0	0.0	11.0	194.0
Meat	71.0	3.0	10.0	84.0
Fruit	58.2	8.3	4.2	70.7
Field crops	7.7	17.1	6.1	30.9
Natural fiber	14.8	5.9	5.8	26.5
Vegetables	8.6	1.0	2.2	11.8
Poultry/eggs	7.2	.1	1.0	8.3
Other	6.7	.5	1.2	8.4
Total	357.2	35.9	41.5	434.6

¹Does not include matching expenditures made by Foreign Agricultural Service, USDA.

²Funds collected from producers total \$530 million. About \$435 million, or 82 percent, goes to sales promotion and research. The rest is for refunds, administration, and other costs.

Table 2—Growth in producer spending for generic promotions

Year	Ads aimed at domestic markets	Ads aimed at overseas markets	Research on product development	Total
<i>Million dollars (adjusted for inflation)</i>				
1979	180.6	19.7	24.6	225.0
1982	172.4	35.5	30.5	238.7
1986	357.2	35.8	41.4	434.6

Producers' contributions to domestic advertising have almost doubled in the 1980's.

Table 3—Characteristics of generic promotions, 1986

Characteristic	Dairy ¹	Field crops	Fruit	Natural fibers	Eggs	Meat ²	Vegetables	Other products ³
	Number							
Total promotions	29	67	82	11	27	8	50	38
Source of legal authority:								
Federal	6	0	15	2	1	2	5	4
State	23	67	67	9	26	6	45	34
Program type:								
Producer-funded	16	42	20	9	15	6	27	18
Marketing order	8	6	43	0	0	0	23	11
Promotion order	5	19	19	2	12	2	0	9
Refund:								
Yes	0	53	16	7	18	2	12	13
No	29	14	66	4	9	6	38	25
Initiating referendum:								
Yes	21	41	65	7	20	6	36	27
No	8	26	17	4	7	2	14	11
Periodic reapproval: ⁴								
Yes	0	28	50	5	15	3	30	11
No	29	39	32	6	12	5	20	27

¹ Includes the national dairy checkoff program, 5 Federal milk marketing orders that allow for promotion, and 23 State-legislated programs.

² Includes only national beef and pork checkoff programs that operate in conjunction with 39 State programs. Also includes State-legislated checkoffs on sheep and wool.

³ Includes such commodities as honey, tree nuts, catfish, and oysters.

⁴ A formal and periodic reapproval referendum is required.

ders or promotion orders). A few programs offer producers the option of having their assessment refunded. Most include provisions for producers to vote in a referendum on whether to start or continue the promotion.

The largest programs (dairy, beef, and pork) do not allow refunds and operate as freestanding programs authorized by Federal law. Almost 72 percent of all programs require an initial referendum before any assessments can be collected. The national dairy, beef, and pork checkoff programs required producer approval after the promotion had been implemented. Fewer than 50 percent of the programs require periodic votes of reapproval by the producers in order to continue.

Advertising funds under mandatory Federal or State programs are usually collected at the first step in the food marketing process. The firm that takes the farm commodities for processing, storage, or transport is called the first handler. A small portion of the first handler's payment to the producer is withheld for ads, based on quantity sold. First handlers deduct the amount they pay into the advertising fund from the

prices they pay to producers or they collect assessments directly from producers as part of handling charges.

Industry boards, such as the National Dairy Promotion and Research Board, collect the funds and administer the advertising programs. The Agricultural Marketing Service, USDA, supervises federally mandated boards to ensure that they comply with the intent of the laws and that funds are legally spent.

Producers' Concerns

Are Generic Ads Effective?

For producers to feel that their dollars are well spent, the ads must show results in product sales. Producers have voiced their confidence in various generic campaigns by voting for the programs in referendums.

Studies have shown a positive relationship between advertising expenditures and sales for a wide range of commodities, including milk, cheese, grapefruit juice, and orange juice.

Ads Boost Cheese Sales

Advertising raised natural cheese sales by about 16 million pounds and processed cheese sales by about 98 million pounds during September 1984-June 1987, according to a recent study. The ads persuaded people who do not normally buy cheese to try natural cheese. The public reacted differently to processed cheese advertising. People who normally buy processed cheese bought more, but not many new customers were attracted to it.

Evaluating generic advertising campaigns is difficult. Many other factors in the market, such as consumer income, prices of substitute foods, and changes in the quality of the advertised product, influence how consumers respond to ads. Spending for generic advertisements is usually far below the amount spent to promote specific brands of foods. Many campaigns have not been underway long enough for results to be clear.

Researchers use two approaches to determine the net effect of promotion on sales. One is the use of econometric modeling techniques that measure relationships between sales and promotion while filtering out the effects of various other factors such as prices and customers' income. Another approach is to use an experimental design technique in which one group of individuals is exposed to the promotion while the other is not. The researchers control for other factors and compare the two groups to determine a net relationship between sales and promotion.

Florida Citrus Ads Improve Sales

Research on the effectiveness of generic and branded advertising for Florida citrus products was conducted at the University of Florida. The research has found:

- both generic and branded advertising had a positive influence on sales;
- the carryover effect of advertising for orange juice was about 15 months, although the greatest effect occurred during the first month the advertising appeared;
- the best approach is to evenly distribute advertising expenditures over the 12 months of the year.

Regardless of the approach, researchers need data on both promotion and consumption to evaluate the relationship between the two. Also, since promotion is not the only influence on consumer purchases, researchers need data to capture the effect of other factors on consumption. The estimated relationship between promotion and consumption can be used to judge the probable sales effectiveness of alternative promotion programs.

Given limited consumer income, if one commodity is to increase its share of total food budgets, it must do so at the expense of competing commodities. Increased funding by several competing commodities, namely beef, pork, and dairy, raises questions about the cross-commodity effect of promotional programs. The resulting change in the structure of the food system affects not only commodity producers but also the consuming public.

To evaluate the cross-commodity effect, econometric models that relate sales and promotion should include all food products bought by consumers. This requires a complete demand system for food purchased by the public. Such a model would be able to assess how promotion of one commodity affects sales of another, competing commodity group, and vice versa. The public sector has a role in this research, since any individual industry is mainly interested in seeing its own promotions succeed and not in evaluating how they assist or damage others. Also, if research is publicly supported, unbiased interpretations of the findings would be freely available to all. So far, however, measurement efforts have been limited because little data on advertising expenditures are available.

Voluntary or Mandatory Contributions?

In the early generic promotions, producers who opposed the program could have their assessments refunded. Federally mandated generic advertising programs now require producers to participate for a specified period of time before voting on whether or not to continue the program. The mandatory programs have been established because offering refunds raised concerns about fairness to producers who supported the program and refunds led to financial problems.

Refunds create administrative burdens. Uncertainty about how many refunds there will be undercuts administrators' ability to plan long-term campaigns. Refunds for egg and cotton programs ran up to 30 percent or more in 1982-83. Refunds can also be viewed as unfair to the majority who contribute because they allow for "free-riders." Because a generic ad promotes

a type of food, such as raisins or milk, all producers in the industry benefit from the campaign, whether they contribute or not. Free-riders who took refunds gained even though they did not share the costs.

To avoid the potential free-rider problem, recent federally legislated programs have been mandatory. The dairy, beef, and pork industries no longer offer refunds. The cotton industry is also seeking to eliminate refunds.

Do Producers Have a Choice?

Since contributions for recent Federal programs are mandatory, the major way for producers to influence a promotion program is through a referendum. Timing of the referendum has raised questions. How will producers know enough about the program's effectiveness to vote before it is implemented? But, is it fair to charge producers fees for advertisements if they have not voted on the program?

In the past, a majority or two-thirds of producers had to approve a checkoff program before it was established. The dairy promotion program under the Dairy and Tobacco Adjustment Act of 1983 was the first federally authorized generic campaign that started before a referendum was taken. The beef and pork industries followed suit.

Producers vote after the programs have operated for a specified period, usually 2 years. Policymakers must consider the equity implications of imposing mandatory assessments on producers who have not yet voted on the program.

But permitting a vote on a program that has not had a chance to be implemented raises policy questions too. Up-front referendums force producers to vote based on their expectations of program benefits. Holding a referendum after a trial period gives producers information about program benefits on which to base their votes. Fees collected before the vote can be viewed as the cost of acquiring better information for voting on longer term programs. A way to give producers unbiased evaluations of the program during the experimental period is needed so that they can make the best informed voting decisions. The dairy and the beef producers recently have voted to continue their check-offs.

Which Producers Benefit from Generic Promotion?

Programs without refund options must be carefully designed to distribute benefits fairly, since all

producers contribute proportionally to the fund. Ads should cover a range of product uses, and administrative bodies should represent the full range of interests among producers.

For example, if assessments are collected on a product that is marketed in both fresh and processed forms, advertising must be directed at markets for both fresh and processed products. Otherwise, only part of the industry gains even though all segments paid into the campaign. Hence, the National Dairy Promotion and Research Board advertises not only fresh milk, but also processed products, such as cheese, since some producers sell only milk that is used in processed dairy products, while others sell milk only for the fresh market.

Consumers' Concerns

Do Generic Promotions Raise Prices?

The ultimate effect of advertising on prices depends on how consumers react to the ads and how producers respond to changes in the demand for their product. Consumers may initially face higher prices from generic promotions because the ads push up the demand for the product and the cost of doing business.

The goal of advertising is to increase sales at any price and to reduce consumers' sensitivity to price changes. Prices rise with rising demand, if other factors such as income and the price of competing goods remain the same. However, prices may not be affected by advertising expenditures in the long run. Over time, producers should respond to the higher price with expanded supplies and reallocation of products among uses.

The case of milk shows how supply changes in response to demand. Recent increases in milk consumption, partly due to generic ads, have caused small reallocations of milk supplies from processed uses to the fresh market.

Other commodity groups may respond to promotions by their competitors. How will poultry pricing change with major beef promotions underway? The poultry consumer could benefit from lower prices spurred by competition from beef, or poultry producers may advertise their own product in response to beef advertising.

Whether a particular generic promotion helps or hurts consumers depends on the mix of products they regularly purchase, and whether other goods are avail-

able to substitute should prices rise. Low-income consumers would be the group hurt most by price hikes, since food takes a larger share of their disposable income. The size of the effect depends on the current mix of foods purchased by low-income people and how the mix changes after the price rise. A better understanding of the mix of goods purchased by consumers, particularly low-income consumers, would help in assessing the potential effects of the advertising programs on different income groups.

Do Consumers Benefit from Generic Promotions?

Many of the newer advertising programs emphasize nutrition education. While placing an economic value on education is difficult, the benefits to lower income groups from nutrition education could exceed losses associated with rising costs.

Consumers can benefit if the generic advertisements offset the effects of advertising for nutritionally inferior foods. Generic campaigns have urged consumers to substitute milk for soft drinks, or grapes for candy. Advertisements can also introduce consumers to a greater variety of foods, offer recipe ideas, and correct misconceptions about a particular food's nutritional value.

Issues for Future Evaluation of Generic Promotion

Evaluation research should be regarded as an integral part of the whole commodity promotion scheme. Promotion programs affect the public as taxpayers and as consumers. They also affect producers who pay costs of assessments or gain revenue generated by promotion. Research results can be useful for tracking and evaluating promotion performance, diagnosing market changes, and making program allocation and implementation decisions.

Fortunately, some evaluation research has been conducted. The Florida Citrus Commission, the United Dairy Industry Association, the New York Milk Promotion Board, the National Dairy Promotion and Research

Board, and other groups have conducted or sponsored econometric studies and experimental design studies. These studies have provided substantial insight into how and the extent to which advertising affects sales and consumption.

Unfortunately, few promotions underway have adequate measures of sales. And even where sales data are available, few of the promotions are actually being evaluated so that empirical measures of the sales effect are generated. If the public interest and the farmer interests are to be appropriately and adequately served, the commodity promotion organizations and the responsible public agencies must ensure that adequate data are generated and appropriate empirical models established, and objective research and analyses performed.

For Additional Information.....

Contact Noel Blisard or Jim Blaylock (202-786-1862), Commodity Economics Division, Economic Research Service, U.S. Department of Agriculture, Room 1124, 1301 New York Avenue, N.W., Washington, DC 20005-4788.

Also see....

Cornell University, Department of Agricultural Economics. Eds. Walter J. Ambruster and R.L. Wills. *Generic Agricultural Commodity Advertising and Promotion*. Mar. 1988.

Blaylock, James R., and W.N. Blisard. *Effects of Advertising on the Demand for Cheese*. TB-1752. U.S. Dept. Agr., Econ. Res. Serv., Dec. 1988.

Lee, Jong-Ying. "Florida Department of Citrus Advertising Research Program." *Advertising and the Food System*, pp. 179-196. North Central Regional Research Publication 287. Eds. J.M. Connor and R.W. Ward. University of Wisconsin, Sept. 1983.

Morrison, Rosanna M. *Generic Advertising of Farm Products*. AIB-481. U.S. Dept. Agr., Econ. Res. Serv., Sept. 1984.

Mr. EMERSON. Thank you very much.

Mr. HATCHER. Chairman de la Garza.

The CHAIRMAN. Thank you, Chairman Hatcher.

Mr. Clayton, do you have information about what countries ship limes into the United States?

Mr. CLAYTON. Congressman, I do not have a complete list. In my testimony, I do note that Mexico, as it turns out, is certainly the dominant exporter to the United States. Something on the order of 94 percent of our imports originate in Mexico. In addition to that, there are three or four other countries—the Bahamas, Honduras, and Costa Rica—which I noted in my testimony, that also ship to us. I do not have complete data on those with me, but I will provide it.

[The information follows:]

In addition, very small amounts are also imported from El Salvador, Guatemala, Ecuador, and Belize.

The CHAIRMAN. What about the season in Mexico?

Mr. CLAYTON. My colleague has pointed out to me that Mexican production occurs year around. The largest volume of shipments would appear to occur in the late summer or early fall months, namely August, September, and October.

The CHAIRMAN. What is the Florida season?

Mr. CLAYTON. I am told the Florida shipping season begins in the month of June and runs into the autumn months, late November, I guess.

The CHAIRMAN. And the California season?

Mr. CLAYTON. I do not have that information with me, sir. I could certainly provide it.

[The information follows:]

Due to the unique storage capabilities of limes, there are however some limited shipments of Florida limes year round.

California's heaviest shipping season is September through January; however, they—like Florida—have some shipments year round due to the storage capabilities of limes.

The CHAIRMAN. What do you do with the limes in transit to a third country? From one country to a third country through the United States?

Mr. CLAYTON. As they might pertain to the assessment and checkoff program that we are talking about?

The CHAIRMAN. Right.

Mr. CLAYTON. That would be a question we would have to resolve as we put the order together. It is a good one. One could put them under U.S. Customs Service bond, so that they technically do not enter the United States. Certainly, that is something we would have to pay attention to as we wrote the order.

The CHAIRMAN. This deals only with fresh limes?

Mr. CLAYTON. That is correct.

The CHAIRMAN. Any variety?

Mr. CLAYTON. That is correct.

The CHAIRMAN. Could you supply for the record, I do not know that we want to burden you with another hearing, Mr. Chairman, but we have to have all these answers before we proceed. We would appreciate it.

I have a list of other countries that ship, I just wanted to test you.

I think all those should be a little better prepared when they come to testify. Thank you, Mr. Chairman.

Mr. HATCHER. Thank you. Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman.

I have an opening statement that I would like put into the record.

Mr. HATCHER. Without objection, it will be placed in the record after Mr. Emerson's statement.

Mr. LEWIS. Thank you. Dr. Clayton, following the chairman's question on the percentage of the limes, it is understood I guess that 24 or 25 percent of the limes coming out of California with the remainder being grown in Florida. But that 24 or 25 percent coming out of California, you really do not know what the total percentage grown in California is, that some of them are exported in, predominantly from Mexico. Is that correct?

Mr. CLAYTON. Our data allow us to distinguish between imports and domestically grown product.

Mr. LEWIS. I am sorry.

Mr. CLAYTON. Our data allow us to differentiate between imports and product which is grown in California, which originates in California.

Mr. LEWIS. Would you say California provides 24 or 25 percent of the limes grown in the United States?

Mr. CLAYTON. That is what our data indicate, yes, sir.

Mr. LEWIS. They are all grown there, you have additional data that indicates others are exported?

Mr. CLAYTON. You are addressing yourself to the transshipment of perhaps Mexican limes through? Yes, sir.

If I understood your question, maybe I am a little confused on that. If the question is: Is product coming in say from outside the country which—

Mr. LEWIS. Let me rephrase it and say you know what limes are exported into the United States?

Mr. CLAYTON. Yes, sir.

Mr. LEWIS. Fifty percent of the limes are—we import 50 percent of our limes here in the United States. The majority of the limes grown in the United States are grown in Florida. It is estimated that 24 percent, maybe 25 percent of the other limes grown in the United States are grown in California.

Is that a hard number or is that 24 or 25 percent also include exported limes into that area that is transshipped to the rest of the United States?

Mr. CLAYTON. That should be a clean number. The 24 or 25 percent should exclude any product which might be transshipped through California, for example.

Mr. LEWIS. Dr. Clayton, the Department and you have expressed several concerns regarding H.R. 1776 which all basically seem to be technical changes. I would like to address one of your concerns. Do you prefer a provision that would specifically prohibit funds used to influence legislation? And in section 5(g) of the bill, is that not covered?

Where it says:

Such order shall provide that funds collected through assessments authorized by this act may not, in any manner, be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this act?

Mr. CLAYTON. Yes, sir. The point we were making was that set of words does not specifically include influencing legislation. One could arguably interpret that extremely broadly and say that it does. However, we have suggested all the way through on the whole set of promotion proposals which we have been looking at, that there be a consistent set of language which specifically identifies legislation as well as Government decisionmaking.

Mr. LEWIS. Further, Dr. Clayton—I guess I will not argue with you on that, because it seems rather straight to me, but you probably have a better feel for that.

Do you see any problems in passing this legislation once the concerns that you have addressed are satisfied and the changes made to H.R. 1776, to be consistent with any other checkoff programs?

Mr. CLAYTON. If our concerns are addressed, we would have no problems. It would be consistent with our policy and we could operate and administer it.

Mr. LEWIS. Mr. Chairman, I would hope we could have staff work with the USDA on this to make those corrections from the points that Dr. Clayton has raised. I, as one cosponsor of the bill, have no problems with these and I will discuss them again with Mr. Fascell. I do not feel that we would run into any great roadblock in moving this ahead.

Mr. HATCHER. We will be glad to do that.

Mr. LEWIS. Dr. Clayton, I want to thank you and appreciate your attendance today, and hope that you encourage the administration to support this legislation. That would help to enhance promotion and research in the U.S. lime industry.

Mr. HATCHER. Thank you, Dr. Clayton.

Next we have a panel, Mr. Pal Brooks, who is a producer/handler in Homestead, Florida, who is accompanied by Mr. James Humble, who is a producer or executive director of the association, in Homestead, Florida.

We would like to welcome you gentleman. Do each of you have a statement or just one?

Mr. HUMBLE. Just Mr. Brooks has a statement.

Mr. HATCHER. Mr. Brooks, your complete statement will be made a part of the record and we welcome you at this time to proceed however you desire.

STATEMENT OF PAL BROOKS, PRODUCER/HANDLER, HOMESTEAD, FL, ACCOMPANIED BY JAMES HUMBLE

Mr. BROOKS. Thank you very much, Congressman.

I think the first thing that I have heard today and would like to address is the issue of 25 percent of the national production being in California.

The numbers have to be understood in that Florida counts certified shipments, which are fruit that goes into the fresh market. We do not count what goes to process. Processors are exempted under our order. We do not collect any money on them.

The numbers for Florida are approximately 1.5 million units goes into the fresh market. There is an additional, more or less, 1 million that goes into the process market.

The 300,000 number for California comes from the California Lime Growers Association. It is a very small group. The California industry is a very small industry; 300,000 from California, 2.5 million from Florida. Or if you want to say fresh only, 300,000 from California, 1.5 million out of Florida. So it is 300,000 out of 1.8 million, if you talk fresh.

The California number, to put it on an equivalent basis with what you see statistically for Mexico and Florida, would have to be reduced, in that the limes in California do not have to meet any standard of any kind, in terms of grade, looks, size, juice. All of the quality standards that the Mexican and Florida industries adhere to, California does not have to meet those standards.

California sells basically every single fruit they pick and they sell them fresh almost 100 percent. So that when you look at California and you see 300, it is not 300 comparable quality and size units, it is 300,000 total units. There have been years in the last 5 or 6 years when that number from California would have been at least 20 percent lower than 300,000.

When you look at Florida, it is 1.5 million fresh and it is 1 million in process. When you look at Mexico, it is in excess of 2 million fresh. The balance does not make size grade standards or is not able to be sold at a price that would cover the incremental cost to bring it into the fresh market and does not cross into the United States and stays in the country of Mexico.

But always keep in mind that we are not looking at comparable items here.

We are also looking at the fact that the people in California are a very small industry. The number I have is that there might be 600 acres in California. Florida is approximately 7,500 acres. Just looking at the differences in acreage would give you some idea of the differences in production.

I hope that addresses that issue. I would welcome any questions, if any of you have any questions left in your mind about what the national supplies are that originate out of California.

Mr. HATCHER. Does that conclude what you would like to say before questioning, or do you have some other points you would like to address?

Mr. BROOKS. I would like to address one other thing. The USDA said that they would have liked to have seen a referendum prior to us coming and asking for the bill. We were unable, as an industry in Florida, to put to a vote this proposal other than to the people in our industry.

The people in our industry represented by grower-members as well as handler-members had long drawn discussions and much input from all people in the industry, as to whether this was something that we felt would benefit our industry. Finally, it did come to a vote and it passed 100 percent.

After that vote, I personally joined with other people in the industry and we went to the border and visited with five different people that sell Mexican fruit, selling somewhere beyond 60 percent of the product that comes out of Mexico totally, to determine

whether they were in favor of such a program. Then I continued the trip and went on into Mexico and met with seven different packers in Mexico. I met with members of the board of directors of a cooperative in Mexico that packs more than 40 percent of what comes from Mexico into the United States.

At no point did I find people opposed to raising money to advertise generic limes in the national U.S. market.

That would be the extent of my statement, unless there were some questions.

[The prepared statement of Mr. Brooks appears at the conclusion of the hearing.]

Mr. HATCHER. We do have some questions, at least I have two or three.

There is a provision in this resolution exempting intrastate shipments of limes from the assessment. How does that relate to your present practice under the marketing order?

Mr. BROOKS. The current practice in Florida is processed or certified. Certified is everything that is going into the fresh market. It is everything that our Federal marketing agreement committee collects fees on. That covers every lime that is sold, except those that go in the process market.

That proviso was put in there because there were some small people in California, in discussions I had with them, that did not want to join this national effort to advertise limes. They felt that what we were going to advertise was the quality and standard that Mexico and Florida could adhere to, and that they would not be able to meet such a standard and would be at a disadvantage.

So we excluded intrastate shipments with the thought in mind that that took care of California and they did not have to come under the program. But within Florida, every lime that does not go to a juice plant becomes a certified lime, pays the fee, and we do not within our marketing agreement currently exclude intrastate shipments.

It is immaterial to our committee whether they are sold 5 miles from where they are packed or whether they are sold 500 miles away. They all pay the same fees.

Mr. HATCHER. And you are not proposing to change that?

Mr. BROOKS. No, sir. That is not our intent at all.

Mr. HATCHER. We are going to need to take a look at this language and see that it does not do more than you are trying to do, in taking care of the California industry.

Mr. BROOKS. That is totally acceptable to those of us in the industry. There is no intent on our part to change how we certify bushel shipments from what we currently do. That is every bushel that goes into the fresh market is certified and pays fees.

Mr. HATCHER. You read the administrative concerns by Dr. Clayton?

Mr. BROOKS. Yes, sir.

Mr. HATCHER. Do you have any response to any of those, like 30 days is not enough or a refund?

Mr. BROOKS. We operate under the auspices of the Secretary and we have to look at them to create the operating rules under which we operate. If we would like 30 days because we are in a hurry and they need 60, then I understand maybe it takes 60.

I am going to have to waive my position, in terms of what the Department wants and say they are the people that are going to really have to administer this. We would like it as soon as possible. Whatever it takes, that is what we are prepared to do, but we are going to have to let them set the rules we operate under.

Mr. HATCHER. Did you hear anything in the testimony from the USDA this afternoon that would be a real burden, that you would like to address further?

Mr. BROOKS. No, sir, I did not.

Mr. HATCHER. Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman.

Actually, I have no questions, Mr. Brooks. You anticipated all my questions. Those that you did not anticipate, the chairman asked, so I do not have any questions. Thank you, Mr. Chairman.

Mr. HATCHER. Thank you. Mr. Sarpalius, do you have any questions?

Mr. SARPALIUS. No questions.

Mr. HATCHER. Mr. Lewis.

Mr. LEWIS. One question, Mr. Chairman.

Mr. Brooks, on page 2 of your testimony, you say about 15 percent of Florida limes shipped in fresh markets are sold intrastate. Do you have any idea the percent used for processing in Florida of that 15 percent?

Mr. BROOKS. The processed numbers are not part of the 15 percent. They are not part of the certified bushels that are sold in Florida or anywhere in the United States or the world.

Approximately 40 percent of the total crop of limes grown in Florida goes to process. Of the remaining 60 percent, I am not sure that we sell 15 percent within the State. The number I would remember was 8 to 12, depending on the time of the year. I hope that answered your question.

Mr. LEWIS. Thank you.

Mr. HATCHER. Mr. Herger, do you have any questions?

Mr. HERGER. I do not.

Mr. HATCHER. We are going to leave the record open for a period of time to receive further information from the USDA. We would like to get those questions answered as quickly as possible, because the producers are interested in moving this legislation and we would like to tender that objective.

I would again like to thank all of you who testified for being here today.

That concludes the hearing.

[Whereupon, at 2:50 p.m., the hearing was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

July 19, 1989

STATEMENT OF CONGRESSMAN DANTE B. FASCELL (D.- FLA.) BEFORE THE DOMESTIC
MARKETING, CONSUMER RELATIONS, AND NUTRITION SUBCOMMITTEE OF THE HOUSE
AGRICULTURE COMMITTEE IN SUPPORT OF H.R. 1776, THE FRESH LIME RESEARCH,
PROMOTION, AND CONSUMER INFORMATION ACT

Mr. Chairman, I thank you for the opportunity to appear before your Subcommittee in support of H.R. 1776, the Fresh Lime Research, Promotion, and Consumer Information Act, which I introduced to help Florida lime growers continue their past successful efforts to improve and expand markets for limes. Our colleague, Congressman Tom Lewis, joined me in introducing this legislation, and seven other Members of the Florida delegation have cosponsored the bill. In addition, this measure was introduced in the Senate by both of our Florida Senators.

Lime growers in Florida have a strong history of coordinated industry efforts to improve their economic position in the marketplace. In the early 1960's, they adopted a Federal marketing order for the establishment of production and marketing research and development projects designed to assist, improve and promote the marketing, distribution and consumption of limes. A second major feature of the marketing order is that the industry has elected to establish minimum quality standards for fresh limes sold in commercial channels.

Since that time, however, market conditions have changed drastically with respect to the quantity of limes imported into the United

States. More specifically, in 1972, for example, only 1,800 metric tons of limes were imported compared to over 30,000 metric tons last year. Once, the domestic market for fresh limes was supplied almost entirely by limes grown in Florida. Now, Florida producers share the domestic market with substantial quantities of imported limes.

The large-scale importation of limes into the United States poses a special problem for Florida producers. The problem is that the Act does not authorize Florida producers to access imported limes in their marketing order. Florida growers are paying the entire cost of a highly successful market expansion program that is benefiting all lime growers regardless of where they are located. Therefore, while Florida lime producers continue to support their own voluntary program of assessments to advertise and promote quality, they believe it only fair and just that foreign producers of limes who export to this country pay their fair share of the cost of the market expansion programs. No distinction would be made in the marketing programs between limes produced in Florida and those which are imported.

Our legislation would correct the inequity that now exists. It would provide for an equitable program where imported limes would be assessed at the exact same rate as limes grown in Florida and sold in commercial markets. This measure is reasonable because, to the extent the market for Florida limes is enhanced by the promotion and advertising program, that same enhancement is afforded the imported product. I want to make one point very clear -- this legislation is not intended to keep limes from being imported into the United States. It is in no way intended to be, nor would its effect

be, a trade barrier. Rather, it is intended to enhance the economic position of all lime growers on a fair and equal basis.

Let me summarize. Florida lime growers now have a successful voluntary market expansion program where they collect assessments on each box of limes sold for the purpose of promotion and advertising. The authority for the program comes from the Agricultural Marketing Agreement Act of 1937 which does not authorize assessments on imported commodities. Since about half of the fresh limes sold in the United States are imported, Florida growers feel it only fair that foreign producers of limes who export to this country should pay their fair share of the costs of market expansion programs. Our legislation would establish a program whereby imported limes would be assessed at the same rate as Florida grown limes to fund the advertising and promotion programs.

I believe our legislation would provide a fair and equitable solution to the current marketing problems that face Florida lime growers, and I urge your favorable consideration of this proposal.

Statement of Kenneth C. Clayton, Acting Administrator
Agricultural Marketing Service
United States Department of Agriculture
before the Subcommittee on Domestic Marketing, Consumer
Relations and Nutrition, House Committee on Agriculture

July 19, 1989

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear before your Committee to present the Department's views on H.R. 1776, the "Fresh Lime Research, Promotion, and Consumer Information Act".

The Department has no objection to the enactment of H.R. 1776 if amended to address the technical and policy concerns outlined in the Department's report to the Committee. Many of the changes recommended for consideration are designed to facilitate the administration and enforcement of H.R. 1776. We will be glad to work with committee staff to draft appropriate bill and report language to address our concerns.

H.R. 1776, if enacted, would enable domestic producers, producer-handlers, and importers of fresh limes to develop, finance, and carry out a nationally-coordinated program for lime promotion, research, and consumer information. The program, which would be administered by an 11-member Lime Board composed of seven producers, three importers, and one public representative, is expected to generate up to \$2 million per year based on an assessment rate of not to exceed \$.01 per pound of fresh limes, as specified in the bill. The bill contains a provision for a delayed referendum, with such referendum to be conducted no later than 2 years after implementation of the order. Approval of the order would require a simple majority of those producers, producer-handlers, and importers voting. No provision is included for assessment refunds under H.R. 1776.

H.R. 1776 also authorizes the Secretary to deal directly with violators of the Act by assessing civil penalties of not more than \$5,000 per violation and issuing cease and desist orders for violations of any order or regulation. This authority would enable the Department to deal with violators through administrative sanctions, subject, of course, to procedural due process. This would expedite the enforcement process, relieve the overburdened Federal court system, and communicate to those covered by the Act the importance of complying with the Act's provisions.

The Department currently oversees national commodity promotion and research programs for beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, and wool, lamb, and mohair. Authority also exists for the floral and wheat industries as well, but programs are not currently in effect for those commodities. These national promotion programs, which focus on generic promotion and market development for their commodities, devote in excess of \$300 million a year to increase public and commercial awareness of their products. The Department has traditionally taken the position that we have no objection to industry self-help initiatives which are designed to help producers improve their position in the marketplace.

Limes are produced almost exclusively in two States, Florida and California. For 1988, according to USDA Market News shipment figures, approximately 75 percent of domestically-produced limes for fresh use were shipped from Florida (74.0 million pounds) and approximately 25 percent (25.3 million pounds) were shipped from California. About 15 percent of Florida limes shipped in fresh markets are sold intrastate. The percentage

of intrastate shipments of California limes is not known. Under Section 5(d)(5)(B), such intrastate shipments would be exempted from assessments.

The major source of imported limes is Mexico which supplied 41,500 metric tons, or about 94 percent of the limes imported into the United States in 1988. Limes are imported from Mexico throughout the year, with the largest quantities arriving in August, September, and October. Small amounts of limes are also imported into the United States from the Bahamas, Honduras and Costa Rica. In 1988, imports provided about half of total fresh lime consumption in the United States. The number of importers has not yet been determined.

Departmental Oversight
of Commodity Promotion and Research Activities

The Department plays an active role in the oversight of federally-sanctioned commodity promotion and research programs to assure that they are administered by the boards in accordance with the authorizing legislation and the order. Annual budgets and workplans of the board are approved by the Secretary, and Department staff is in regular attendance of meetings of the boards. This ongoing and active oversight helps assure that industry-generated funds are expended for the purposes intended.

Department Recommendations

To facilitate the administration and enforcement of H.R. 1776, the Department recommends a number of changes to conform the bill to Departmental policy. Minor technical changes are addressed separately in our report to the Committee.

Refunds and Referendum — H.R. 1776 makes no provision for refunds or an upfront referendum. In the absence of either of these provisions, the Department strongly believes that provision is needed for refunds of assessments incurred on sales prior to the referendum. Either direct refunds on a monthly basis (as is provided for in most programs of this type) or a provision for escrowing funds to make a one-time refund could be employed. If the escrowing alternative is utilized, the Department believes that a minimum of 10 percent of total assessments collected during the period prior to conduct of the referendum is a reasonable level for escrowing. Direct refund or provision for a one-time refund by escrowing previously has been included in the pork, beef, and egg programs.

Full Reimbursement to Department — H.R. 1776 provides for reimbursement to the Secretary for costs incurred by the Secretary after an order has been issued and for expenses incurred by the Secretary for conduct of any referendum under the Act, except, in the latter case, for salaries of Government employees. The Department believes that it should also be reimbursed for all startup costs incurred prior to the issuance of the order, including salaries of Government employees. Although the Department has previously absorbed salary and some other costs associated with the startup of similar programs, the growing number of these types of programs requires us to redirect staff resources from other critical program areas to handle the heavy volume of work associated with their implementation. We can no longer continue to absorb these costs. We believe such costs should be borne by the affected industries, not by the general public.

Time Constraints — Section 4(d) requires the Secretary to publish a proposed order not later than 30 days after receipt of such proposal, and to issue such final order after notice and opportunity for public comment. The 30-day timeframe places severe time constraints on our limited staff resources. The Department suggests that a 60-day requirement would be more reasonable and attainable, and would provide the Secretary sufficient time to review and publish a proposed order in the Federal Register.

Prohibition on Use of Funds — Departmental policy requires that producer assessment funds not be used for purposes of influencing any legislation or any governmental policy or action, including legislation, except in recommending to the Secretary amendments to the order. The Department feels strongly that the prohibition contained in section 5(g) should be revised specifically to include legislation and to conform the statutory language to this long-standing and important policy.

Severance from Federal Marketing Order Programs — Certain provisions in H.R. 1776 concerning assessments and referenda procedures reference comparable requirements with respect to any Federal marketing order regarding limes that is in effect before the date of the enactment of this Act i.e., Federal Marketing Order No. 911 for Florida limes. Section 6(2) provides that with the Secretary's approval only the portion of the Lime Board's assessments above the amount assessed under the Federal marketing order would be required for those regulated under the order. However, this provision would have no practical effect since only lime producers, producer-handlers (in their capacity as producers) and importers would pay assessments under the proposed program, and

only handlers are assessed under the Federal marketing order. In addition, section 10 provides for a referendum on the order whenever a referendum is conducted for a Federal marketing order. The Department strongly believes it is inappropriate to relate the administration of a free-standing research and promotion program which is national in scope to the operations of the regional Federal marketing order, because of the differences in the nature, scope and functions of the two programs.

Intrastate Shipments — Section 5(d)5(B) of H.R. 1776 exempts intrastate shipments from assessment. The Department recommends deletion of the exemption for intrastate shipments because we believe the exemption is not justified and would confer an unwarranted advantage on intrastate shipments of fresh limes under the proposed national research and promotion program.

Departmental Costs

Estimated startup costs to be reimbursed to the Department for promulgation of the order and conduct of the referendum would amount to about \$50,000. Annual costs thereafter for administration and oversight activities would approximate \$50,000 as well.

Mr. Chairman, the Department looks forward to working with the Committee and industry representatives to develop a viable, workable, producer/importer financed program to enable the lime industry to advance its position in the marketplace.

This concludes my statement. My associates and I will be glad to respond to any questions the Committee may have.

BEFORE THE SUBCOMMITTEE ON
DOMESTIC MARKETING, CONSUMER RELATIONS AND
NUTRITION OF THE U.S. HOUSE COMMITTEE ON AGRICULTURE

HEARINGS ON LEGISLATION TO ESTABLISH A COORDINATED
RESEARCH, PROMOTION AND CONSUMER INFORMATION
PROGRAM FOR FLORIDA LIMES

STATEMENT BY PAL BROOKS

Mr. Chairman, my name is Pal Brooks. I am a grower and handler of Florida limes. My family has been engaged in producing and marketing limes in Florida since 1939. Over the years, we have been supportive of a wide range of research and market development efforts designed to improve the economic well-being of lime growers.

Today, I am appearing before your subcommittee on behalf of lime growers in Florida to ask your support of legislation that would assist our industry to continue our efforts to improve the markets for limes.

Practically all limes produced in the United States are grown in Florida. They represent an important part of the agricultural economy of the state. In recent years, production has been around one and a half million boxes with a value to growers of over 25 million dollars.

Lime growers in Florida have a strong history of coordinated industry efforts to improve our economic position in the marketplace. In the early 1960's we adopted a Federal marketing order for the establishment of production and marketing research and development projects designed to assist, improve and promote the marketing, distribution and consumption of limes. A second major feature of the marketing order is that we elected to establish minimum quality standards for fresh limes sold in commercial channels.

Marketing orders, authorized by the Agricultural Marketing Agreement Act of 1937, give producers of fruit, vegetable and specialty crops an opportunity to enter into an agreement with the Secretary of Agriculture to establish programs to stabilize and improve the markets for these crops. In the lime marketing order, we collect assessments on each box of limes marketed to carry out our promotion, education and quality maintenance programs.

The complementary aspects of the two features of our marketing order results from the fact that it does not make good business sense to spend money to advertise and promote a product of poor quality. Since consumers generally do not consider limes a basic food, it becomes important for lime producers to engage in consumer education efforts and to market a product of exceptional quality.

The Florida lime industry is a cohesive group. We continue to strongly endorse our coordinated and voluntary efforts to help ourselves without asking for subsidies or support from the Federal treasury. But the programs and subsequent benefits afforded us by the current marketing order have been severely eroded by changing market conditions.

Since the 1960's when the marketing order was adopted, market conditions have changed drastically with respect to the quantity of limes imported into the United States. More specifically, in 1972, for example, only 1,800 metric tons of limes were imported compared to over 30,000 metric tons last year. Once, the domestic market for fresh limes was supplied almost entirely by limes grown in Florida. Now, Florida producers share the domestic market with substantial quantities of imported limes.

The substantial importation of limes into the United States poses a special problem for Florida producers. The problem is that the Marketing Agreement Act does not authorize Florida producers to assess imported limes in their marketing order. Thus, while we continue to support our own voluntary program of assessments to advertise and promote quality -- quality standards which apply equally to imported limes, we believe it only fair and just that foreign producers of limes who export to this country pay their fair share of the cost of the market expansion programs which benefit all lime producers.

I noted earlier that a main feature of our Federal marketing order was a provision to ship only limes that meet a minimum quality standard. The importation of limes does not create a problem in this regard. Section 608e of the Act specifies that if a domestic industry imposes minimum quality standards on its own domestically produced product, then those same minimum quality standards apply to the imported product.

The legislation which we are asking you to support would correct the inequity that now exists. It would provide for an equitable program where imported limes would be assessed at the exact same rate as limes grown in Florida and sold in commercial markets. It is a reasonable request because to the extent the market for Florida limes is enhanced by the promotion and advertising program, that same enhancement would be afforded the imported product. The legislation would, in no way, be an attempt to keep imported limes out of the country. It is not intended to be, nor would its effect be, a trade barrier.

Let me summarize. Florida lime growers now have a successful voluntary market expansion program where we collect assessments on each box of limes sold for the purpose of promotion and advertising. The authority for the program comes from the Agricultural Marketing Agreement Act of 1937 which does not authorize assessments on imported commodities. But, about half

of the fresh limes sold in the United States are imported. We feel it only fair that foreign producers of limes who export to this country should pay their fair share of the costs of market expansion programs. We are asking your support for legislation that would establish a program whereby imported limes would be assessed at the same rate as Florida grown limes to fund the advertising and promotion programs.

Mr. Chairman, I appreciate an opportunity to appear before your subcommittee and will be glad to answer any questions that you or the subcommittee members may have.

**STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE HOUSE AGRICULTURE COMMITTEE
SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER
RELATIONS AND NUTRITION
WITH REGARD TO H.R. 1776,
THE FRESH LIME RESEARCH, PROMOTION AND
CONSUMER INFORMATION ACT
July 19, 1989**

AFBF has for many years recognized the right of producers to establish and fund programs designed to promote increased research, sales and consumption of the commodities they produce. As a general farm organization representing producers in 49 states and Puerto Rico, our members produce virtually every commercially produced agricultural commodity. Our membership feels it is imperative that commodity specific checkoff programs be structured to provide producer control and safeguards against the program's misuse of funds or engaging in inappropriate activity.

It is important to remember these research and promotion programs have the potential to increase returns to the producers of the commodity. At the same time, the funds collected from farmers are of significant magnitude both in total and to the individual producer. We estimate that approximately \$500 million is being collected annually to fund programs for a variety of commodity checkoffs in place today. This is a large sum in the aggregate. On the other hand, an individual's contribution of one-half of one percent of the value of his product amounts to 10 percent of his net profit if he is operating at a 5 percent profit margin, as is typical for many farmers. The point is that these funds add up to significant sums. The growers funding these programs need to exercise control over the program so that the resources collected from farmers are utilized in an effective and efficient manner. If this producer control is not assured, farmers may come to view the collection of these funds as an imposed tax rather than as a worthwhile contribution to a cooperatively developed, administered and funded grower effort.

Farm Bureau has developed policy over the years which addresses specific provisions that should be included in a checkoff program in order for us to support its establishment. These provisions are mainly intended to provide producer control and limit the use of funds to proper activities for checkoff programs. Many of the specifics we require were included as provisions of the Agricultural Marketing Agreement Act of 1937 and are, therefore, grounded in historical legislative precedent. The list of safeguards included in Farm Bureau policy are:

- (1) Approval by producer referendum prior to implementation of a program;
- (2) Referendum procedures which protect voting rights, provide uniform voting procedures and encourage maximum participation by producers;

(3) Producer control over the program. There should be opportunity for refunds of assessments without undue difficulty. For programs that do not allow a refund, a periodic referendum to determine continuation or termination of the program should be held at intervals not to exceed five years; however, a referendum shall be held at any time upon petition of at least 10 percent of the registered producers in any area covered by the program;

(4) Producer control of the board administering the program; and,

(5) Limitations on the use of funds for promotion, market development and research only. Grower educational programs should be limited to project information and financial statements.

H.R. 1776, the Fresh Lime Research, Promotion and Consumer Information Act, does not contain three key provisions that are necessary to allow AFBF to support this legislation. The first amendment that we would propose would be to provide for and upfront referendum instead of the present proposal of delaying the referendum for two (2) years. Producers should be allowed to vote on need for the program prior to implementation. The second amendment we would suggest is to provide either a refund provision or a provision for a continuation referendum every five (5) years. Finally, the provision that allows for a petition for a continuation referendum should be changed from a request of 25 percent of those subject to the act to 10 percent of those subject to the act.

The committee may want to consider developing generic commodity promotion legislation that would establish overall guidelines for development of commodity specific promotion and research programs. If pursued this legislation should include provisions that provide protection for producers and assure producer control of the program as outlined in our policy position.

AFBF supports allowing producers to establish programs that provide research and promotion of their products. Control of these programs must remain in the hands of producers. We feel that the policy position our members have established will provide for strong promotion programs under producer control.

101ST CONGRESS
1ST SESSION

H. R. 1776

To provide for a nationally coordinated program of research, promotion, and consumer information regarding limes that is designed to expand domestic and foreign markets for limes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 1989

Mr. FASCELL (for himself and Mr. LEWIS of Florida) introduced the following bill;
which was referred to the Committee on Agriculture

A BILL

To provide for a nationally coordinated program of research, promotion, and consumer information regarding limes that is designed to expand domestic and foreign markets for limes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fresh Lime Research,
5 Promotion, and Consumer Information Act".

6 **SEC. 2. FINDINGS; PURPOSES; AND LIMITATIONS.**

7 (a) **FINDINGS.**—Congress finds that—

8 (1) domestically produced limes are grown by
9 many individual producers;

1 (2) virtually all domestically produced limes are
2 grown in the State of Florida;

3 (3) limes move in large part in channels of inter-
4 state and foreign commerce;

5 (4) in recent years, large quantities of limes have
6 been imported into the United States;

7 (5) the maintenance and expansion of existing do-
8 mestic and foreign markets for limes and the develop-
9 ment of additional and improved markets for limes are
10 vital to the welfare of lime producers and other persons
11 concerned with producing, marketing, or processing
12 limes;

13 (6) a coordinated program of research, promotion,
14 and consumer information regarding limes is necessary
15 for the maintenance and development of such markets;
16 and

17 (7) lime producers, lime producer-handlers, lime
18 handlers, and lime importers are unable to implement
19 and finance such a program without cooperative action.

20 (b) PURPOSES.—The purposes of this Act are—

21 (1) to authorize the establishment of an orderly
22 procedure for the development and financing (through
23 an adequate assessment) of an effective and coordinat-
24 ed program of research, promotion, and consumer in-
25 formation regarding limes designed—

1 (A) to strengthen the position of the lime in-
2 dustry in domestic and foreign markets; and

3 (B) to maintain, develop, and expand mar-
4 kets for limes; and

5 (2) to treat domestic and foreign producers of
6 limes equitably.

7 (c) LIMITATIONS.—

8 (1) QUALITY STANDARDS AND PRODUCTION.—

9 Nothing in this Act shall be construed to require qual-
10 ity standards for limes, control the production of limes,
11 or otherwise limit the right of the individual producers
12 to produce limes.

13 (2) IMPORTED LIMES.—Nothing in this Act shall
14 be construed as a trade barrier to limes produced in
15 foreign countries.

16 SEC. 3. DEFINITIONS.

17 For purposes of this Act:

18 (1) BOARD.—The term “Board” means the Lime
19 Board provided for under section 5(b).

20 (2) CONSUMER INFORMATION.—The term “con-
21 sumer information” means any action taken to provide
22 information to, and broaden the understanding of, the
23 general public regarding the use, nutritional attributes,
24 and care of limes.

1 (3) HANDLE.—The term “handle” means to sell,
2 purchase, or package fresh limes.

3 (4) HANDLER.—The term “handler” means any
4 person in the business of handling fresh limes.

5 (5) IMPORTER.—The term “importer” means any
6 person who—

7 (A) imports limes into the United States; or

8 (B) acts as an agent, broker, or consignee for
9 any person or nation that produces limes outside
10 of the United States for sale in the United States.

11 (6) LIME.—The term “lime” means the fruit of a
12 citrus aurantifolia tree.

13 (7) MARKETING.—The term “marketing” means
14 the sale or other disposition of limes in commerce.

15 (8) ORDER.—The term “order” means a lime re-
16 search, promotion, and consumer information order
17 issued by the Secretary under section 4(a).

18 (9) PERSON.—The term “person” means any in-
19 dividual, group of individuals, partnership, corporation,
20 association, cooperative, or other entity.

21 (10) PRODUCER.—The term “producer” means
22 any person who produces limes in the United States
23 for sale in commerce.

(a) AUTHORITY OF THE SECRETARY.—Subject to this Act, and to effectuate the declared purposes of this Act, the Secretary shall issue and, from time to time, amend lime research, promotion, and consumer information orders applicable to handlers, producers, producer-handlers, and importers of limes.

1 (b) NOTICE AND PUBLIC COMMENT.—The Secretary
2 shall publish each order proposed to be issued under subsec-
3 tion (a) and give due notice and opportunity for public com-
4 ment upon such order. For purposes of this subsection, an
5 amendment to an order shall be considered as an order.

6 (c) SUBMISSION OF A PROPOSED ORDER OR AMEND-
7 MENT.—A proposal for an order or amendment under sub-
8 section (a) may be submitted by, and an opportunity for
9 public comment may be requested by, any person affected by
10 this Act.

11 (d) INITIAL PROPOSAL.—In the case of the first pro-
12 posal for an order the Secretary receives under subsection (c),
13 the Secretary shall comply with subsection (b) not later than
14 the end of the 30-day period beginning on the date the Secre-
15 tary receives such proposal.

16 (e) FINDINGS AND ISSUANCE OF AN ORDER.—After
17 notice of and an opportunity for public comments has been
18 provided under subsection (b), the order or amendment that is
19 the subject of such notice and public comment shall be issued
20 if the Secretary finds that, on the evidence introduced by
21 such public comment, the issuance of the order or amendment
22 and all the terms and conditions therein will further the pur-
23 poses of this Act. The Secretary shall include such findings in
24 the order or amendment.

1 (f) **EFFECTIVE DATE.**—An order issued under subsec-
2 tion (a) shall take effect on the date such order is issued.

3 **SEC. 5. REQUIRED TERMS OF AN ORDER.**

4 (a) **IN GENERAL.**—An order issued by the Secretary
5 under section 4(a) shall contain the terms and conditions de-
6 scribed in this section and, except as provided in section 6, no
7 other terms or conditions.

8 (b) **LIME BOARD.**—Such order shall provide for the es-
9 tablishment of a Lime Board as follows:

10 (1) **MEMBERSHIP.**—The Board shall be composed
11 of—

12 (A) seven members who are producers and
13 who are not exempt from an assessment under
14 subsection (d)(5)(A);

15 (B) three members who are importers and
16 who are not exempt from an assessment under
17 subsection (d)(5)(A); and

18 (C) one member appointed from the general
19 public.

20 (2) **APPOINTMENT AND NOMINATION.**—The Sec-
21 retary shall appoint the members of the Board. The 7
22 members who are producers shall be appointed from in-
23 dividuals nominated by lime producers. The 3 members
24 who are importers shall be appointed from individuals
25 nominated by lime importers. The public representative

1 shall be appointed from nominations of the Board. If
2 producers and importers fail to nominate individuals for
3 appointment, the Secretary may appoint members on a
4 basis provided for in the order. If the Board fails to
5 nominate a public representative, such member may be
6 appointed without a nomination.

7 (3) ALTERNATES.—The Secretary shall appoint
8 an alternate for each member of the Board. An alter-
9 nate shall—

10 (A) be appointed in the same manner as the
11 member for whom such individual is an alternate;
12 and

13 (B) serve on the Board if such member is
14 absent from a meeting or is disqualified under
15 paragraph (5).

16 (4) TERMS.—Members of the Board shall be ap-
17 pointed for a term of 3 years. Of the members first ap-
18 pointed—

19 (A) three members shall be appointed for a
20 term of 1 year;

21 (B) four members shall be appointed for a
22 term of 2 years; and

23 (C) four members shall be appointed for a
24 term of 3 years;

1 as designated by the Secretary at the time of appoint-
2 ment.

3 (5) REPLACEMENT.—If a member or alternate of
4 the Board who was appointed as a producer, importer,
5 or public representative ceases to belong to the group
6 for which such member was appointed such member or
7 alternate shall be disqualified from serving on the
8 Board.

9 (6) COMPENSATION.—Members and alternates of
10 the Board shall serve without pay.

11 (7) REIMBURSEMENT OF EXPENSES.—While
12 away from their homes or regular places of business in
13 the performance of duties for the Board, members and
14 alternates shall be allowed travel expenses, including a
15 per diem allowance in lieu of subsistence, in the same
16 manner as persons employed intermittently in Govern-
17 ment service are allowed travel expenses under section
18 5703 of title 5, United States Code.

19 (8) POWERS AND DUTIES.—The Board shall—

20 (A) administer orders issued by the Secretary
21 under section 4(a), and amendments to such
22 orders, in accordance with their terms and provi-
23 sions and consistent with this Act;

24 (B) prescribe rules and regulations to effectuate
25 the terms and provisions of such orders;

1 (C) receive, investigate, and report to the
2 Secretary accounts of violations of such orders;

3 (D) make recommendations to the Secretary
4 with respect to amendments that should be made
5 to such orders; and

6 (E) employ a manager and staff.

7 (c) BUDGETS AND PLANS.—Such order shall provide for
8 periodic budgets and plans as follows:

9 (1) BUDGETS.—The Board shall prepare and
10 submit to the Secretary a budget (on a fiscal period
11 basis determined by the Secretary) of the anticipated
12 expenses and disbursements of the Board in the admin-
13 istration of the order, including probable costs of re-
14 search, promotion, and consumer information. A budget
15 shall take effect upon the approval of the Secretary.

16 (2) PLANS.—Each budget shall include a plan for
17 research, promotion, and consumer information regard-
18 ing limes. A plan under this paragraph shall take effect
19 upon the approval of the Secretary. The Board may
20 enter into contracts and agreements, with the approval
21 of the Secretary, for—

22 (A) the development and carrying out of such
23 plan; and

24 (B) the payment of the cost of such plan with
25 funds collected pursuant to this Act.

1 (d) ASSESSMENTS.—Such order shall provide for the
2 imposition and collection of assessments with regard to the
3 production and importation of fresh limes as follows:

4 (1) RATE.—The assessment rate shall not exceed
5 \$.01 per pound of fresh limes.

6 (2) COLLECTION BY FIRST HANDLERS.—Except
7 as provided in paragraph (4), the first handler of limes
8 shall—

9 (A) be responsible for the collection from the
10 producer, and payment to the Board, of assess-
11 ments under this subsection; and

12 (B) maintain a separate record of the limes of
13 each producer so handled, including the limes
14 owned by the handler.

15 (3) PRODUCER-HANDLERS.—For purposes of
16 paragraph (2), a producer-handler shall be considered
17 the first handler of limes produced by such producer-
18 handler.

19 (4) IMPORTERS.—The assessment on imported
20 limes shall be paid by the importer at the time of entry
21 into the United States and shall be remitted to the
22 Board.

23 (5) EXCEPTIONS.—

1 (A) CERTAIN PERSONS.—The following per-
2 sons are exempt from an assessment under this
3 subsection—

4 (i) a producer who produces less than
5 35,000 pounds of limes per year;

6 (ii) a producer-handler who produces
7 and handles less than 35,000 pounds of limes
8 per year; and

9 (iii) an importer who imports less than
10 35,000 pounds of limes per year

11 (B) INTRASTATE SHIPMENTS.—Intrastate
12 shipments of limes shall—

13 (i) be exempt from assessment under
14 this subsection; and

15 (ii) not be included in the calculation of
16 limes produced or handled for purposes of
17 subparagraph (A).

18 (6) CLAIMING AN EXEMPTION.—To claim an ex-
19 emption under paragraph (5) for a particular year, a
20 person shall submit an application to the Board—

21 (A) stating the basis for such exemption; and

22 (B) certifying that such person will not
23 exceed the limitation required for such exemption
24 in such year.

25 (e) USE OF ASSESSMENTS.—

1 (1) IN GENERAL.—Such order shall provide that
2 funds paid to the Board as assessments under subsec-
3 tion (d) may be used by the Board to—

4 (A) pay for research, promotion, and con-
5 sumer information described in the then current
6 budget of the Board under subsection (c) and for
7 other expenses incurred by the Board in the ad-
8 ministration of an order;

9 (F) pay such other expenses for the adminis-
10 tration, maintenance, and functioning of the Board
11 as may be authorized by the Secretary;

12 (C) fund a reserve established under section
13 6(5); and

14 (D) pay the administrative costs incurred by
15 the Secretary under this Act after the initial order
16 has been issued.

17 (2) REFERENDA.—Such order shall provide that
18 the Board shall reimburse the Secretary, from assess-
19 ments collected under subsection (d), for any expenses
20 incurred by the Secretary in conducting referenda
21 under this Act.

22 (f) FALSE CLAIMS.—Such order shall provide that any
23 promotion funded with assessments collected under subsec-
24 tion (d) may not make—

1 (1) any false or unwarranted claims on behalf of
2 limes; and

3 (2) any false or unwarranted statements with re-
4 spect to the attributes or use of any product that com-
5 petes with limes for sale in commerce.

6 (g) GOVERNMENT INFLUENCE.—Such order shall pro-
7 vide that funds collected through assessments authorized by
8 this Act may not, in any manner, be used for the purpose of
9 influencing governmental policy or action, except for making
10 recommendations to the Secretary as provided for in this Act.

11 (h) BOOKS; RECORDS; AND REPORTS.—

12 (1) BY THE BOARD.—Such order shall require
13 the Board—

14 (A) to maintain books and records with re-
15 spect to the receipt and disbursement of funds re-
16 ceived by the Board;

17 (B) to submit to the Secretary from time to
18 time such reports as the Secretary may require
19 for appropriate accounting; and

20 (C) to submit to the Secretary at the end of
21 each fiscal year a complete audit report regarding
22 the activities of the Board during such fiscal year.

23 (2) BY OTHERS.—So that information and data
24 will be available to the Board and the Secretary that is
25 appropriate or necessary for the effectuation, adminis-

1 tration, or enforcement of this Act (or any order or
2 regulation issued under to this Act), such order shall
3 require handlers, producer-handlers, and importers who
4 are responsible for the collection of assessments under
5 subsection (d)—

6 (A) to maintain and make available for in-
7 specification by the Secretary such books and records
8 as may be required by the order; and

9 (B) to file, at the times, in the manner, and
10 having the content prescribed by the order, re-
11 ports regarding the collection of such assessments.

12 (i) **CONFIDENTIALITY.**—

13 (1) **IN GENERAL.**—Such order shall require that
14 all information obtained pursuant to subsection (h)(2)
15 shall be kept confidential by all officers and employees
16 of the Department of Agriculture and of the Board.
17 Only such information as the Secretary considers rele-
18 vant shall be disclosed and only in a suit or administra-
19 tive hearing brought at the request of the Secretary or
20 to which the Secretary or any officer of the United
21 States is a party involving the order with respect to
22 which the information was furnished or acquired.

23 (2) **LIMITATIONS.**—Nothing in this subsection
24 prohibits—

1 (A) issuance of general statements based on
2 the reports of a number of handlers, producer-
3 handlers, importers subject to an order, if the
4 statements do not identify the information fur-
5 nished by any person; or

6 (B) the publication by direction of the Secre-
7 tary, of the name of any person violating an order
8 issued under section 4(a), together with a state-
9 ment of the particular provisions of the order vio-
10 lated by such person.

11 **SEC. 6. PERMISSIVE TERMS AND PROVISIONS.**

12 On the recommendation of the Board and with the ap-
13 proval of the Secretary, an order issued under section 4(a)
14 may—

15 (1) provide authority to the Board to exempt from
16 such order limes exported from the United States, sub-
17 ject to such safeguards as the Board may establish to
18 ensure proper use of the exemption;

19 (2) provide that, with respect to any Federal mar-
20 keting order regarding limes, which—

21 (A) is in effect before the date of the enact-
22 ment of this Act; and

23 (B) the Secretary determines is comparable
24 to the program established under this Act;

1 there shall be paid to the Board as provided in section
2 5(d) that portion of the assessment under such section
3 that is greater than the assessment, if any, actually
4 paid on the limes pursuant to such other marketing
5 order;

6 (3) provide authority to the Board to designate
7 different handler payment and reporting schedules to
8 recognize differences in marketing practices and proce-
9 dures;

10 (4) provide that the Board may convene from time
11 to time working groups drawn from producers, han-
12 dlers, producer-handlers, importers, exporters, or the
13 general public to assist in the development of research
14 and marketing programs for limes;

15 (5) provide authority to the Board to accumulate
16 reserve funds from assessments collected pursuant to
17 section 5(d) to permit an effective and continuous co-
18 ordinated program of research, promotion, and con-
19 sumer information, in years in which production and
20 assessment income may be reduced, except that any
21 reserve fund so established may not exceed the amount
22 budgeted for operation for 1 year;

23 (6) provide authority to the Board to use, with the
24 approval of the Secretary, funds collected under section

1 5(d) for the development and expansion of lime sales in
2 foreign markets; and

3 (7) provide for terms and conditions—

4 (A) incidental to, and not inconsistent with,
5 the terms and conditions specified in this Act; and

6 (B) necessary to effectuate the other provi-
7 sions of such order.

8 **SEC. 7. PETITION AND REVIEW.**

9 (a) **PETITION.**—

10 (1) **IN GENERAL.**—A person subject to an order
11 may submit, within a period prescribed by the Secre-
12 tary, to the Secretary a written petition—

13 (A) stating that such order, a provision of
14 such order, or an obligation imposed in connection
15 with such order is not in accordance with law;
16 and

17 (B) requesting a modification of the order or
18 an exemption from the order.

19 (2) **HEARINGS.**—A person submitting a petition
20 under paragraph (1) shall be given an opportunity for a
21 hearing on the petition, in accordance with regulations
22 issued by the Secretary.

23 (3) **RULING.**—After the hearing, the Secretary
24 shall make a ruling on the petition that shall be subject
25 to review under subsection (b).

1 (b) REVIEW.—

2 (1) COMMENCEMENT OF ACTION.—A person ag-
3 grieved by a ruling under subsection (a)(3) may obtain
4 a review of such ruling by commencing, within the 20-
5 day period beginning on the date such ruling is made,
6 a civil action in the district court of the United States
7 for the district in which—

8 (A) such person resides; or

9 (B) carries on business related to the subject
10 matter of such action.

11 (2) PROCESS.—Service of process in such civil
12 action may be made on the Secretary by delivering to
13 the Secretary a copy of the complaint.

14 (3) REMANDS.—If the court determines that the
15 ruling is not in accordance with law, the court shall
16 remand the proceedings to the Secretary with direc-
17 tions—

18 (A) to make the ruling as the court shall de-
19 termine to be in accordance with law; or

20 (B) to take such further proceedings as, in
21 the opinion of the court, the law requires.

22 (4) ENFORCEMENT.—The pendency of proceed-
23 ings instituted pursuant to this subsection shall not
24 impede, hinder, or delay the United States or the Sec-
25 retary from obtaining relief pursuant to section 8.

1 SEC. 8. ENFORCEMENT.

2 (a) JURISDICTION.—The district courts of the United
3 States shall have jurisdiction specifically to enforce, and to
4 prevent and restrain any person from violating, an order or
5 regulation issued under this Act.

6 (b) REFERRAL TO ATTORNEY GENERAL.—The facts
7 relating to any civil action authorized to be brought under
8 this section shall be referred to the Attorney General for ap-
9 propriate action, except that the Secretary shall not be re-
10 quired to refer to the Attorney General a violation of this Act
11 if the Secretary believes that the administration and enforce-
12 ment of the order would be adequately served by administra-
13 tive action under subsection (c) or suitable written notice or
14 warning to any person committing the violation.

15 (c) CIVIL PENALTIES AND ORDERS.—

16 (1) CIVIL PENALTIES.—Any person who violates
17 any provision of any order issued by the Secretary
18 under section 4(a), or who fails or refuses to pay, col-
19 lect, or remit any assessment or fee duly required of
20 the person under the order, shall be liable to the
21 United States for a civil penalty assessed under subsec-
22 tion (d) in an amount not less than \$500 nor more than
23 \$5,000 for each violation. Each violation shall be con-
24 sidered as a separate offense.

25 (2) CEASE AND DESIST ORDERS.—In addition to,
26 or in lieu of, a civil penalty, the Secretary may issue

1 an order under subsection (d) requiring the person to
2 cease and desist from continuing the violations.

3 (d) ASSESSMENT OR ISSUANCE BY SECRETARY AFTER
4 NOTICE AND HEARING.—A civil penalty payable under sub-
5 section (c)(1) may be assessed, and a cease and desist order
6 authorized under subsection (c)(2) may be issued, only by the
7 Secretary on the record after notice and an opportunity for a
8 hearing.

9 (e) REVIEW BY COURT OF APPEALS.—

10 (1) COMMENCEMENT OF ACTION.—A person ag-
11 grieved by a civil penalty assessed or cease and desist
12 order issued under subsection (d) may obtain review of
13 the penalty or order by—

14 (A) filing, within the 20-day period beginning
15 on the date such penalty is assessed or order
16 issued, a notice of appeal in—

17 (i) the court of appeals of the United
18 States for the circuit in which the person re-
19 sides or carries on business; or

20 (ii) the United States Court of Appeals
21 for the District of Columbia Circuit; and

22 (B) simultaneously sending a copy of the
23 notice by certified mail to the Secretary.

24 (2) RECORD.—As part of the response of the Sec-
25 retary to a notice under paragraph (1), the Secretary

1 shall file in the court the record on which the civil pen-
2 alty or cease and desist order is based.

3 (3) STANDARD OF REVIEW.—The findings of fact
4 made by the Secretary shall be conclusive if supported
5 by substantial evidence in the record taken as a whole.

6 (f) FAILURE TO OBEY ORDERS.—Any person who fails
7 to obey a cease and desist order after the order has become
8 final and unappealable, or after the appropriate court of ap-
9 peals has entered a final judgment in favor of the Secretary,
10 shall be subject to a civil penalty assessed by the Secretary,
11 after opportunity for a hearing and for judicial review under
12 the procedures specified in subsections (d) and (e) of not more
13 than \$500 for each offense. Each day during which the fail-
14 ure continues shall be considered as a separate offense.

15 (g) FAILURE TO PAY ASSESSMENTS.—If any person
16 fails to pay an assessment of a civil penalty after the assess-
17 ment has become a final and unappealable assessment, or
18 after the appropriate court of appeals has entered final judg-
19 ment in favor of the Secretary, the Secretary shall refer the
20 matter to the Attorney General for recovery of the amount
21 assessed in an appropriate district court of the United States.
22 In the action, the validity and appropriateness of the final
23 order imposing the civil penalty shall not be subject to
24 review.

1 SEC. 9. INITIAL REFERENDUM.

2 (a) REQUIREMENT.—Not later than 2 years after the
3 date on which the Secretary first issues an order under sec-
4 tion 4(a), the Secretary shall conduct a referendum among
5 producers, producer-handlers, and importers who—

6 (1) are not exempt from assessment under section
7 5(d)(5); and

8 (2) produced or imported limes during a represent-
9 ative period as determined by the Secretary.

10 (b) PURPOSE OF REFERENDUM.—The referendum re-
11 ferred to in subsection (a) is for the purpose of determining
12 whether the issuance of the order is approved or favored by
13 not less than a majority of the producers, producer-handlers,
14 and importers voting in the referendum. The order shall con-
15 tinue in effect only with such a majority.

16 (c) CONFIDENTIALITY.—The ballots and other informa-
17 tion or reports that reveal, or tend to reveal, the vote of any
18 person under this section, or section 10, shall be held strictly
19 confidential and shall not be disclosed.

20 SEC. 10. SUSPENSION AND TERMINATION.

21 (a) FINDING OF SECRETARY.—If the Secretary finds
22 that an order issued under section 4(a), or a provision of such
23 order, obstructs or does not tend to effectuate the purposes of
24 this Act, the Secretary shall terminate or suspend the oper-
25 ation of such order or provision.

1 (b) PERIODIC REFERENDA.—The Secretary may peri-
2 odically conduct a referendum to determine if lime producers,
3 producer-handlers, and importers favor the continuation, ter-
4 mination, or suspension of any order issued under section 4(a)
5 and in effect at the time of such referendum.

6 (c) REQUIRED REFERENDA.—The Secretary shall hold
7 a referendum under subsection (b)—

8 (1) at the request of the Board;

9 (2) if not less than 25 percent of the lime produc-
10 ers, producer-handlers, and importers subject to assess-
11 ment under this Act submit a petition requesting such
12 a referendum; and

13 (3) whenever the Secretary conducts a referendum
14 regarding limes pursuant to a marketing order issued
15 under section 8c of the Agricultural Adjustment Act (7
16 U.S.C. 608c), reenacted with amendments by the Agri-
17 cultural Marketing Agreement Act of 1937.

18 (d) VOTE.—The Secretary shall suspend or terminate
19 the order at the end of the marketing year if the Secretary
20 determines that—

21 (1) the suspension or termination of the order is
22 favored by not less than a majority of those persons
23 voting in a referendum under subsection (b); and

24 (2) the producers, producer-handlers, and import-
25 ers comprising this majority produce and import more

- 1 than 50 percent of the volume of limes produced and
- 2 imported by those voting in the referendum.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

Honorable E (Kika) de la Garza
Chairman, Committee on Agriculture
House of Representatives
Washington, DC 20515

October 13 1989

Dear Mr. Chairman:

We appreciate this opportunity to respond to your recent request for a report on H.R. 1776, the "Fresh Lime Research, Promotion, and Consumer Information Act."

The Department of Agriculture has no objection to the enactment of H.R. 1776 if the bill is amended to address technical and policy concerns outlined in the enclosed statement. The changes recommended for consideration are designed to facilitate the administration and enforcement of H.R. 1776. We will be pleased to work with the Committee and industry representatives to draft appropriate bill and report language to address such concerns.

H.R. 1776, if enacted, would enable domestic producers, producer-handlers, and importers of fresh limes to develop, finance, and carry out a nationally-coordinated program for lime promotion, research, and consumer information. The program, which would be administered by an 11-member Lime Board composed of seven producers, three importers, and one public representative, is expected to generate up to \$2 million per year based on an assessment rate not to exceed \$.01 per pound of fresh limes, as specified in the bill. The bill contains a provision for a delayed referendum, with such referendum to be conducted no later than 2 years after implementation of the order. Approval of the order would require a simple majority of those producers, producer-handlers, and importers voting. No provision is included for assessment refunds under H.R. 1776.

The Department currently oversees national commodity promotion and research programs for beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, and lamb, wool and mohair. Authority exists for the floral and wheat industries as well, but programs are not currently in effect for those commodities. These national promotion programs, which focus on generic promotion and market development for their commodities, devote in excess of \$300 million a year to increase public and commercial awareness of their products. The Department has traditionally taken the position that we have no objection to these industry self-help initiatives which are intended to improve the affected industries in the marketplace.

The provisions of H.R. 1776 are similar to authorities for research and promotion programs for the dairy, beef and pork industries. Each of these programs was implemented without a formal rulemaking hearing and with a delayed referendum.

Honorable E (Kika) de la Garza

2.

While the Department does not object to a delayed referendum, we do strongly feel that provision should be made for a refund of assessments collected prior to the referendum, either by providing for direct refunds on a monthly basis or for an escrow plan. If the escrowing alternative is utilized, the Department believes it would be reasonable to require that a minimum of 10 percent of total assessments collected during the period prior to the initial referendum be placed in escrow. Direct refund or provision for a one-time refund from escrowed assessments was included in the pork, beef, and egg programs.

H.R. 1776 provides for the Secretary to be reimbursed for costs incurred by the Department in conducting referenda and for those administrative costs incurred after an order has been issued. Provision should also be included for full reimbursement to the Department of all costs incurred in the development of these programs which would include all costs incurred by the Secretary in implementing the order, including salaries of Government employees. All startup costs, including the conduct of the initial referendum, are estimated at \$45,000 to \$50,000. After the order is issued, ongoing administrative costs are expected to approach \$40,000 to \$50,000 annually.

Certain provisions in H.R. 1776 concerning assessments and referenda procedures reference comparable requirements with respect to any Federal marketing order regarding limes which is in effect before the date of the enactment of this Act i.e., Federal Marketing Order No. 911 for Florida limes. Section 6(2) provides that with the Secretary's approval only the portion of the Lime Board's assessments above the amount assessed under the Federal marketing order would be required for those regulated under the order. However, we question whether this provision would have any practical effect since only lime producers, producer-handlers (in their capacity as producers) and importers would pay assessments under the proposed program, and only handlers are assessed under the Federal marketing order. In addition, section 10 provides for a referendum on the order whenever a referendum is conducted for a Federal marketing order. The Department strongly believes it is inappropriate to relate the administration of the research and promotion program authorized by H.R. 1776 to the operations of the Federal marketing order which is promulgated pursuant to separate statutory authority. The scope and design of the Federal marketing order, including the marketing order's limited regional applicability, suggest that this provision should be deleted from the bill.

Limes are produced almost exclusively in two States, Florida and California. For 1988, according to USDA Market News shipment figures, approximately 74 percent of domestically-produced limes for fresh use were shipped from Florida (74.0 million pounds) and approximately 25 percent (25.3 million pounds) were shipped from California. Thus, Section 2(a)(2) should be changed to reflect the fact that limes are produced in the States of Florida and California. About 15 percent of Florida limes shipped in fresh markets are sold intrastate. The percentage of intrastate shipments of California limes is not known. Under Section 5(d)(5)(B), such intrastate shipments would be exempted from assessment. The Department recommends deletion of the exemption for intrastate shipments because it represents inequitable treatment of interstate and foreign shipments of fresh limes.

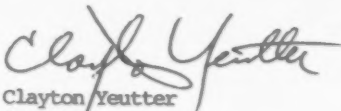
Honorable E (Kika) de la Garza

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The major source of imported limes is Mexico which supplied 41,500 metric tons, or about 94 percent of the limes imported into the United States in 1988. Limes are imported from Mexico throughout the year, with the largest quantities arriving in August, September, and October. Small amounts of limes are also imported into the United States from the Bahamas, Honduras and Costa Rica. In 1988, imports provided about half of total fresh lime consumption in the United States. The number of importers has not yet been determined.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


Clayton Yeutter
Secretary

Enclosure

FRESH LIME RESEARCH, PROMOTION, AND CONSUMER INFORMATION ACT

Section 2(a)(2), page 2, line 2 -- Delete "State of Florida" and insert in lieu thereof "States of Florida and California" because about 25 percent of U.S. fresh shipments originate in California.

Section 3(6), page 4, line 12 -- Add at the end of the sentence "and for the purposes of this statute shall mean limes for fresh markets."

Section 4(d) page 6, line 14 -- The "30" day period should be extended to 60 days to give the Secretary sufficient time to review and publish a proposed order in the FEDERAL REGISTER.

Section 5(b)(2), page 7, line 20 -- This section should be revised to prescribe more clearly the method of nomination of producer and importer members to the Lime Board, or to provide specific authority for the Secretary to establish appropriate nomination procedures.

Section 5(d)(5)(B), page 12, line 11 -- This provision should be deleted because it establishes an exemption for domestically-produced intrastate shipments of limes which confers an unjustified advantage on such intrastate shipments.

Section 5(e)(1), page 13, line 14 -- This provision should be rewritten as follows: "to pay the expenses incurred by the Secretary, including salaries and expenses of government employees in implementing and administering the order."

Section 5(g), page 14, line 9 -- Insert the words "legislation" after the word "influencing" to conform the prohibition to departmental policy which prohibits the use of assessment funds for the purpose of influencing governmental policy or action, including legislation, except in recommending amendments to the Secretary.

Section 6(2), page 16, line 19 -- This provision should be deleted in its entirety as it would have no practical effect since only lime producers, producer-handlers (in their capacity as producers) and importers would pay assessments under the proposed program, and only handlers are assessed under the Federal marketing order for Florida limes.

Section 8 -- Authority should be provided to the Secretary to conduct investigations, to administer oaths, and to issue subpoenas. Such authority is essential to an effective compliance program.

Section 8(c)(1), page 20, line 23 -- For clarity, "plus the payment, in full, of the unpaid assessments or fees" should be added following the words "for each violation."

Section 10 (c)(2), page 24, line 9 -- Delete "25" and insert in lieu "10" to conform to departmental policy.

Section 10(c)(3), page 24, line 13 -- This provision should be deleted because any order established under the proposed act covers all importers and the Federal marketing order covers only domestically-produced fresh limes grown in Florida. Because of differences in scope and function, each program should operate independently of the other.

New Section (Refunds) — Add a new section to provide for refunds to producers and importers who request them of assessments collected prior to the initial referendum on the order, either through escrowing or direct refund on a monthly basis. A reasonable amount for escrowing would represent a minimum of 10 percent of total assessments collected during the period prior to the initial referendum. Such escrowed funds could be used to make a one-time refund to producers and importers.

FRESH MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT AND THE POTATO RESEARCH AND PROMOTION ACT AMENDMENTS OF 1989

TUESDAY, JULY 25, 1989

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS, AND NUTRITION,
COMMITTEE ON AGRICULTURE,
Washington, DC.**

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 1302, Longworth House Office Building, Hon. Charles Hatcher (chairman of the subcommittee) presiding.

Present: Representatives Panetta, Sarpalius, and Emerson.

Also present; Representative Stallings, member of the committee, and Representatives Tanner and Grant.

Staff present: Fred J. Clark, associate counsel; Glenda L. Temple, clerk; Julia M. Paradis, Dean Mitchell, James R. Lyons, Anita R. Brown, James A. Davis, and Lynn Gallagher.

OPENING STATEMENT OF HON. CHARLES HATCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. HATCHER. The hearing will come to order. I would like to welcome all of you to the Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition. Today we have a hearing on two proposed marketing orders. One on H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act, that was introduced by Congressman Leon Panetta. And H.R. 2257, the Potato Research and Promotion Act Amendments of 1989, introduced by Congressman Richard Stallings.

[H.R. 2187, H.R. 2257, and the reports from the U.S. Department of Agriculture appear at the conclusion of the hearing.]

Mr. HATCHER. Promotion and research programs are specifically designed to enhance consumer demand for an agricultural commodity and the products made from it. Programs have been put in place under Federal authorizing legislation for cotton, milk, beef, pork, eggs, and several other commodities. This subcommittee is currently examining the proposals of several producer groups that are hopeful of either starting a program or amending their current one.

H.R. 2187, as written, would enable producers of fresh mushrooms to develop, fund, and implement a nationally coordinated

program for fresh mushroom promotion, research, and consumer information.

H.R. 2257, as written, would amend the National Potato Act of 1971, to authorize assessments of imported potatoes. The present statute authorizes assessments only on potatoes produced in the United States. This legislation would assure that fair treatment is given domestic potato producers. It would also delete the current refund provision under the 1971 act. This current provision results in a situation where about 5 percent of the growers refund about 15 percent of total assessments collected. And finally, this legislation is proposing that the changes associated with this bill be made without another producer referendum. I look forward to hearing from the witnesses regarding both these proposed orders.

Our first witness this morning will be Richard Stallings, Congressman from Idaho.

**STATEMENT OF HON. RICHARD H. STALLINGS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO**

Mr. STALLINGS. Thank you, Mr. Chairman. I think it is very appropriate that I speak to the Potato Act since that is, of course, Idaho's most famous crop. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you to enlist your support to amend the Potato Research and Promotion Act of 1971. I, along with 11 of my colleagues, introduced legislation on May 4, 1989, to improve methods of assessments in funding a program of research, promotion, and consumer education for potatoes.

As you know, under the authority and provision of the Potato Research Act, the Secretary of Agriculture appoints potato producers from throughout the United States to serve on the potato board. The board collects assessments on all potatoes used for human consumption and for seed. These assessments are used for the purpose of conducting research and promotional programs to expand markets for potatoes.

The 1971 act has been extremely beneficial to potato growers across the country, as well as to consumers. However, modifications are needed to reflect the changes in the potato market since the program was first established.

First, current law authorizes assessments only on fresh potatoes produced in the United States. My bill, H.R. 2257, would authorize assessments on imported potatoes and potato products. It would assure equitable treatment for domestic producers, as well as foreign producers who export potatoes to the United States—both of whom benefit from the generic promotional campaigns conducted by the board. Similar legislation has already been passed for other commodities, including the beef and pork programs. Under present law—any potato producer can request refunds from assessments. Approximately 5 percent of potato producers currently request refunds amounting to more than 15 percent of assessment moneys. Again, all potato producers benefit directly or indirectly from the promotional activities of the potato board. Too many large producers request refunds and still benefit from the program without contributing to it. The legislation would direct the Secretary of Agri-

culture to make the needed changes without a producer referendum.

With nearly 95 percent of current potato producers supporting the promotional and research efforts of the potato board, it is evident that the industry already supports the assessment process. A producer referendum would be costly and only confirm the fact that support for the program already exists. This legislation would not change the provisions of current law which allow the Secretary to monitor the board's activities, to terminate the promotional plan if necessary, or to hold a referendum if requested by 10 percent of the growers.

These safeguards, similar to other commodity assessment programs, maintain accountability without necessitating a producer referendum in connection with this legislation. With these two modifications in the Potato Research and Promotion Act, the potato industry can more effectively meet research needs and promotional efforts.

Mr. Chairman, another issue that we are going to have to address is the tremendous need for education. Last year the potato industry was hit with a scare from someone over at FDA on the aldecarb issue. There was no substance to it, and yet the potato industry was threatened with serious economic damage. I think that in this age of media hysteria and the concerns of people over the use of different pesticides, it is extremely important that we give these people the necessary funds to do a number of things. These would include educating the consumers to protect their own industry and helping with the research necessary to identify what pesticides and herbicides are safe.

So Mr. Chairman, again, I thank you for this opportunity and ask for your support, and that of the other subcommittee members for these proposed changes. This bill is very very important to the people in my district and to potato producers across the country. We enlist your support in this legislation.

[The prepared statement of Mr. Stallings appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you very much, Mr. Stallings. Do you know of any opposition from any growers or grower groups?

Mr. STALLINGS. I have heard from a very small group of people that have, in fact, requested the refunds. When I have explained to them that this is more than just to do TV commercials for the consumption of potatoes, and that it is in fact awfully important for education to defend the industry from these charges, such as the aldecarb scare, that seems to satisfy them. So as far as I know, there is really no significant opposition. As pointed out in my testimony only 5 percent of the growers request refunds as it is. So obviously with 95 percent of the industry supporting the legislation, I think that also speaks well for the issue of fairness. For the first time foreign growers are going to be contributing to this fund of which they obviously benefit.

Mr. HATCHER. Thank you very much. Mr. Emerson, do you have questions?

Mr. EMERSON. Regrettably, Mr. Chairman, I have been detained in traffic and I do not have any questions at this moment.

Mr. HATCHER. Mr. Panetta. No questions. Well, thank you very much for your testimony. Next we will hear from Representative Schulze.

**STATEMENT OF HON. RICHARD T. SCHULZE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. SCHULZE. Thank you, Mr. Chairman, Mr. Panetta, Mr. Emerson, members of the subcommittee. I appreciate the opportunity to appear before you this morning and testify on behalf of H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act. Never before have I seen the mushroom growers of America or the mushroom growers of Pennsylvania or the mushroom growers of my district, which is the largest single mushroom producing district in America so unified or so mobilized behind any one proposal.

These growers, many of whom I have known for over 25 years run mainly small- to medium-sized family owned operations and they are hard working and enormously proud. They have dealt with adversity in the form of a massive onslaught of dumped Chinese mushrooms which accompanied the late 1970's to the early 1980's and fortunately some have survived. And now as embodied in the legislation before us, H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act, these same growers see, as do some of your constituent growers, a great opportunity to do more than just survive. To them, this legislation represents a chance to tell more people about the value of what they produce, to achieve greater success, and in so doing, keep their pursuit of the American dream alive.

And what, after all, are these growers looking for from Congress? Are they looking to be bailed out of some problem? No. Are they looking to be exempted from the Federal income tax? No. Are they looking for hundreds of millions of dollars in subsidies? No, they are not. Well, what is it they want? Mr. Chairman, all they are asking of us is to let them do what we do every time the bells ring, to vote in a truly democratic fashion.

Through the consent of a majority vote, they, as a unified and cohesive industry, want to develop projects to provide information on the nutritional benefits, the proper selection, storage, handling, and preparation of fresh mushrooms—all of which would be of substantial benefit to the consumer. Indeed, in an era in which shoppers are mistakenly becoming convinced that their next bite of a fruit or vegetable may be their last, reassuring them on the food safety aspect of purchasing fresh produce is not only laudable, it is essential. As separate entities, the smaller growers, the true foundation of this industry, have no vehicle for getting this information out to the public.

However, united with H.R. 2187's larger supporters, they can, but need passage of this legislation to accomplish these great things. In this regard, I must add that this subcommittee's willingness to hold such a prompt hearing sends a very positive message that we, too, think self-determination through majority-rule is a precious commodity.

Unfortunately, it has come to my attention that a severely limited number of savvy, Capitol Hill-wise, corporate powerhouse view stalling this process as preferable to helping it move along. They say this bill is an attempt by some members of the fresh mushroom industry to levy a tax on others in the industry to achieve their goals. The fact of the matter is that every producer from the smallest to the largest will pay the same nominal amount of each unit of production. The assessment is sensibly linked to production, the more you produce, the more you pay, but also the more you stand to gain and benefit. Further, H.R. 2187 is designed to give all growers, large and small, the opportunity to compete as an industry for the highly sought-after grocery store shelf space, without which no mushrooms would be sold.

These same corporate critics also complain about the substantial sacrifices they might have to make in order to pay their fair share of assessments to the National Mushroom Council. Somehow, and disturbingly I might add, this implies that the small family run farm would not be making any sacrifices in order to meet their payments. In fact, it is these same growers who by agreeing to pay the assessment, so that the would-be National Mushroom Council may pursue goals for the good of the entire industry, are making the greatest sacrifices.

What these folks are giving up does not come out of a corporate budget or a stock dividend, it comes off the kitchen table. And it is the result of their own personal blood, sweat, and tears. But they truly believe, as do I, that they are sacrificing in the short run for something a little better for themselves and their family and their children down the road. We, in Congress, should reward, not inhibit, that spirit.

Mr. Chairman and members of the subcommittee, I again thank you for the opportunity to testify on behalf of a piece of long overdue legislation in the form of H.R. 2187. I am hopeful that your diligent efforts to move this legislation will remain on track, and that you will steadfastly resist the efforts of a couple of corporate opponents to derail the process at the expense of scores of small, family owned farms. As you know, these family owned operations are an endangered species, and by enacting this bill and without expending a penny, Congress can let them know that they do have something worthwhile to say, that they do have something worthwhile to sell, and that somebody out there wants to hear it and somebody out there wants to buy it.

I thank you for your attention. I would be happy to answer any questions that you have.

[The prepared statement of Mr. Schulze appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you very much, Mr. Schulze. Mr. Emerson, do you have questions?

Mr. EMERSON. Thank you, Dick, for your outstanding statement. I am pleased that all the parties that are interested in this issue were able to meet on the issue. I understand that a lot of differences that remain are outstanding, but I am glad that that meeting took place and I hope that future meetings will occur. I think it is important to work out the divisions that do exist within an industry. You perhaps know I am a strong supporter of research and

promotion programs, producer-initiated and producer-run. Nevertheless, the industry, whatever commodity it is, ought to be as unified as possible. They ought to be together on the program. These programs do have to be equitable with no bias to one side of the industry or the other. But I am committed to seeing this bill go forward and I hope that the fruitful discussions that have been held will continue and that there may be a resolution of whatever outstanding issues remain.

It is interesting that commodities that have had these kinds of programs in operation for several years do not ever second guess it any more. They wonder why they did not do it a long time before they did. They have all proven successful, to the best of my knowledge. I would hope that that would be the case here with mushrooms.

Mr. SCHULZE. Exactly, the gentleman on this subcommittee certainly remembers some of the wrangling and the bickering that preceded each of those and they have been extremely successful and have helped the industry a great deal. We think that will be the result of this as well.

Mr. HATCHER. You hope these hearings might mushroom into something? [Laughter.]

Mr. SCHULZE. I would not say that.

Mr. HATCHER. Mr. Panetta.

Mr. PANETTA. Thank you, Mr. Chairman. I do not have any questions because Dick Schulze has long been a leader with regard to the mushroom battles that we fought over the years, whether it was against imports or trying to develop better markets for mushrooms, not only here, but throughout the world. And I think he is right. The problem is you have an industry that is a fairly young industry in this country. It is in the maturing process, and as it tries to mature, it is sometimes difficult for people to break out of the little areas that they have developed for themselves.

I have seen that time and time again when it comes to marketing orders. We have seen it where an industry tries to come together to promote their product. You are dealing with a lot of different turfs that have been established in the production of that particular commodity. And we are seeing it here. This is no different. I guess, what I am hoping is that, as Bill has suggested, the parties can come together and resolve their differences. Ultimately this is going to happen. If it does not happen now, it is going to happen later. It is going to happen. And it is much better if it happens with the cooperation of all of the industry because those who oppose it are going to find themselves isolated in the future. There are a lot of producers that want to come together in this kind of promotion product.

It is a majority vote. The fact is the majority of industry has a right to decide how they want to be able to promote this product. And incidentally in this particular bill, there is an additional provision that says if it does not work in 4 years, they get a chance to reconsider the program. So you have a period of time here where it can be tested. If it does not work, the majority of the producers can again come back and decide whether they want to proceed with it or not.

I think the basis for a good program is here in this legislation, and I just hope the industry is wise enough and those that are part of the industry are wise enough to bring it together.

Mr. SCHULZE. I thank the gentleman for those remarks and I would like to take this opportunity to thank him because we have stood shoulder to shoulder over the years in trade issues, in labeling issues to try to protect this relatively small and somewhat unsophisticated industry. In the early 1970's, they were—I was going to use the term "devastated"—but they were certainly impacted and were reeling and almost knocked out by enormous influx of low priced imports which practically, for all intensive purposes, destroyed the mushroom canning industry in the United States of America. And they were small businessmen, independent, rugged individualists and they could not understand why these enormous forces—world market forces—were impacting on their little turf. They have become more sophisticated, and it is almost like the old mule in the 2 by 4 story. Because they have had to—these are the survivors of these small independent farms and independent family owned businesses. They are more sophisticated. They are looking for ways to be on top and to be in front, and this bill will give them an opportunity to prove that once again that they can survive—not only survive, but profit and contribute to the consumer and the business climate in the United States of America.

Mr. HATCHER. Thank you, Richard. Thank you, Dick. I appreciate your testimony. At this time, we are going to have some opening statements. Mr. Emerson.

OPENING STATEMENT OF HON. BILL EMERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. EMERSON. Thank you, Mr. Chairman. This is the second in our scheduled hearings for research and promotion programs for various commodities. As I have said in the past, these are programs that I wholeheartedly support. They are a means by which producers can join together to promote their products, to provide nutritional information to consumers, and to support research efforts.

Over the past 30 years, Congress has approved several research and promotion programs designed and implemented by the producers themselves. These programs provide producers with the structure to establish and to fund programs designed to promote research, sales, and consumption of their products. I support these types of research and promotion programs and believe that they are a means for producers in the United States to not only promote their products, but also to fund research programs designed to increase uses of the various products and to advise consumers of the benefits, the outstanding qualities of the products that they are seeking to promote.

Today our hearing is on two bills—one by the gentleman from Idaho, Mr. Stallings, on potatoes, and the other one introduced by the gentleman from California, Mr. Panetta, having to do with mushrooms.

H.R. 2257 is a bill to provide for improved methods of assessment for the Potato Research and Promotion Program and to finance a more effective marketing research and promotion program. The

Potato Research and Promotion Program is now in place and has been since 1971. This bill seeks to amend that program by including provisions to assess importers of potatoes, as domestic producers are assessed, and to eliminate refunds of assessments.

H.R. 2187 establishes the authority to enable producers of fresh mushrooms to develop, finance, and implement a national research and promotion program. The stated goals of this program are to strengthen the fresh mushroom industry, expand the market, and develop new markets and new uses for fresh mushrooms.

In the past other producers of commodities have implemented research and promotion programs, and such types of commodities include beef, cotton, and dairy. Other commodities are seeking to establish these programs, such as soybeans, limes, and pecans.

I am pleased that the subcommittee is going to have this opportunity to hear all of our witnesses today, particularly the representatives of the affected industries. Thank you very much, Mr. Chairman.

Mr. HATCHER. Thank you, Mr. Emerson. Mr. Panetta.

OPENING STATEMENT OF HON. LEON E. PANETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PANETTA. Thank you, Mr. Chairman. I would ask unanimous consent that my statement be made part of the record. What I would like to do is just summarize some of the points with regard to H.R. 2187. I am pleased that the subcommittee is meeting and receiving testimony on this proposal. And I am also pleased that the members of the industry are meeting and continuing to meet to see if they can resolve their differences.

This is basically the same kind of promotion and research program that we have seen operate very successful with regard to other products. I think when an industry comes together to fund their own promotion and research and consumer information efforts, that it is to the benefit of that industry. We are facing a tremendous amount of competition from abroad and on a number of fronts. And the fact is that if we do not get our act together and establish comprehensive marketing approaches for the produce that we provide in this country, and research efforts with regard to that product, if the industry is divided, it is going to be very easy for imports to conquer those particular markets. That has been the history over the last few years.

And it is for that reason that I think it is very important for an industry like the mushroom industry to get its act together in this kind of effort. To do it, it takes a majority of those who raise mushrooms to vote for the establishment of this program, and that is the way it should be. But they ought to have that opportunity to vote on this kind of program. Just because we pass legislation, does not mean it is going to happen. It means that this gives the growers the opportunity to then vote on it. And if they vote on it, why should not a majority of those who raise the mushrooms, who have their life invested in the mushrooms, have some opportunity to determine what happens with regard to that industry.

Second, as I mentioned, this program is not permanent. It has a start-up period of 3 years. If people are not pleased with it, they

can ask the Secretary to call for another referendum to basically bring it down. And that is the way it should be as well, so that it is not permanent, it is on a temporary lease to see whether it works or not. It is a self-help mechanism. That basically means the industry is coming together as we have in a number of other products to try to promote and unify the industry; 90 percent of all agricultural producers in the United States contribute money to farm-commodity promotion and market development activities—90 percent—through either State or federally legislated programs. That says something about the importance of these kind of marketing programs.

I think the second reason that the industry just cannot lose sight of is we are living at a time that all it takes is one little scare, one little rumor to destroy an entire market. We have seen that happen with Alar. We have seen it happen with grapes. It does not take much to destroy an entire market, just on the basis of a rumor or a false report or a scare of one kind or another. And very frankly, I have to tell you, the Federal Government does not have the capacity to even challenge most of those rumors, as was proven by the Alar situation. The Federal Government said there is no problem with Alar. Once those reports came out, once they got spread across the press, it was over. And it impacted seriously on the apple market in this country.

The same thing can happen in mushrooms. It does not take much. It just takes one scare, one place, somehow, some use of a pesticide, insecticide or whatever might be used to raise mushrooms. All you need is somebody, somewhere to say, this is producing the wrong results, somebody is getting sick from it. And how does the industry respond to that when you are spread across the country and when we are all divided in terms of how you can test it? You cannot just say, the hell with somebody else, I am going to survive on my own. It just does not work any more.

So based on what are the realities of the marketplace today, it just makes sense from a number of different points of view for the industry to get its act together. I think as the testimony will show today, there are some differences of opinion regarding the merits of establishing this kind of research and promotion program, and I respect the people who have differences in this legislation. I respect those on all sides of this issue. What makes our system healthy is that people can have differences when it comes to this kind of approach. But I do understand that the different parties have been able to meet at my request and the request of others. I think there is a clear understanding of the differences, and I guess my hope is that once all the cards are on the table, that we can put together a compromise that reflects the best interest of the industry.

As I said, this is in a maturing industry; this is not one that has reached the height of its maturity. We have a lot of people across this country that are beginning to get interested in the mushroom business. There are some difficult issues that divide you. There are a lot of turf issues. I know where you are all coming from. You have basically fought your own battles. You have established your own area of competition, and you are worried that somehow if you move away from that and join the rest of the industry that that

might hurt your own sales. I do not think that is the case. I think it is all to your interest to join together in this kind of effort.

And I speak with experience, not just as a Member of Congress. My father was a walnut farmer in California. Walnuts went through the same thing. Everybody who raised walnuts said, we do not want to get into a promotion program because they did their own thing basically. I used to sell walnuts on the road. But ultimately by developing this kind of research program, they have expanded the market for walnuts. The same thing is true for almonds. The same thing is true for other products. It works. We have seen it work, if the industry will unify behind that effort.

So I guess that is what I am hoping today is that we will see the industry come together. Because I think ultimately the industry will be much better off in the future if you will do that. Thank you, Mr. Chairman.

[The statement of Mr. Panetta follows:]

STATEMENT OF THE
HON. LEON E. PANETTA
REGARDING H.R. 2187
THE FRESH MUSHROOM PROMOTION, RESEARCH,
AND CONSUMER INFORMATION ACT

Mr. Chairman, I want to thank you for scheduling this hearing on H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act. I also want to welcome one of the co-sponsors of the bill, our Colleague the Hon. Richard Schulze of Pennsylvania, who will testify before the Subcommittee.

This Subcommittee has a history of experience in dealing with research and promotion programs along the lines of what would be established in accordance with H.R. 2187. Having dealt in the past with similar programs for beef, pork, dairy, cotton, eggs, and honey, to name a few, the Subcommittee has established a track record of success in developing programs which have benefitted the producers of focus. And having seen the benefits of marketing and promotion programs for other farm products, the Subcommittee has been approached by other producer groups who seek to establish similar programs. Such is the case this year for limes, pecans, soybeans, and mushrooms.

Based, in large part, on the successful framework which has been developed for other promotion and research programs, the fresh mushroom program would permit producers of fresh mushrooms to fund their own promotion, research, and consumer information efforts. This would be done through an assessment which is fixed at a level per pound of mushroom production -- a half cent per pound of production in the first year; one cent in the second; and not to exceed two cents in the third.

The funds collected through this assessment -- which would be paid only by those producers and importers who handled at least 500,000 pounds of mushrooms a year -- would be managed and the program administered through a Mushroom Council. The Council would be composed of representatives of the fresh mushroom industry representing the various growing regions of the country. Appointments would be made by the Secretary of Agriculture.

Most importantly, Mr. Chairman, this research and promotion program would not be established unless and until a majority of the mushroom growers voted to support its establishment. Approval by a majority of the growers voting in a referendum is needed before the Secretary can implement the order to establish the program.

Nor is the program permanent. Following a start-up period of three years, should an adequate number of mushroom producers petition the Secretary to seek a referendum to suspend or terminate the program, then the Secretary must conduct such a vote of the producers. And if two-thirds of those voting concur, then the program can be suspended or terminated.

Mr. Chairman, research and promotion programs such as would be established for fresh mushrooms by H.R. 2187, are a self-help mechanism to aid agricultural producers who seek to improve markets for their products and to better their own industry. We have seen the benefits to other agricultural products. Studies have shown a positive relationship between advertising expenditures and sales for a wide range of commodities including

milk, cheese, grapefruit and orange juice. One sign of the success of these programs and the confidence that both consumers and producers have in them is the amount of participation in research and promotion programs like these. Ninety percent of all agricultural producers in the U.S. contribute money to farm commodity promotion and market develop activities through State or federally-legislated programs.

Mr. Chairman, H.R. 2187 can help strengthen the fresh mushroom industry's position in the marketplace. In addition, it can help to unite the industry to provide the critical mass needed to initiate beneficial research and consumer information efforts.

This is especially important at a time when food safety is dominating consumers' minds. As we have seen all too dramatically with apples and Alar, one bad apple can spoil the bunch. As a result of consumers' fear of Alar, apple sales are off dramatically, despite the fact that only a small percentage of the apple industry has used Alar.

The apple industry has the funds and the capability to counter these fears and hopefully will regain its markets. Nevertheless, apple growers have suffered substantial losses. In its current condition, I question if many producers in the mushroom industry could survive a similar food safety scare. This is one area where a united mushroom industry can benefit from the collective resources that H.R. 2187 can generate.

I would like to close by applauding the efforts of the

Mushroom Council and others in the mushroom industry who have worked on this bill.

As the testimony will demonstrate today, there are some differences of opinion regarding the merits of establishing a research and promotion program for fresh mushrooms. Nevertheless, Mr. Chairman, at our request, I understand that the groups affected met last night and attempted to work out their differences. Although agreement has not yet been reached, I trust that both sides have a clearer understanding of where each other stands and a better sense of what is needed to provide for a program with the broadest possible benefit. At least both sides have put their cards on the table, which should help us to resolve these differences as the bill moves forward.

Mr. Chairman, this bill is intended to benefit all fresh mushroom producers -- the big and the small. In fact, the largest fresh mushroom producer in the United States -- Monterey Mushrooms -- is based in my district. Their President, Mr. Shah Kazemi, will testify today.

I look forward to Shah's testimony and that of the others who will testify before us today. In addition, I look forward to working with all those affected by this legislation to forge a bill that will allow the fresh mushroom industry to better itself, should it choose to do so, in the future. Thank you.

Mr. HATCHER. Thank you. We would like to welcome Representative Bill Grant from Florida who has an interest in one of these bills, the mushroom bill, I believe in particular. Bill's district and mine are separated only by the Georgia-Florida line. We welcome you to sit in with us today. Do you have any statement you would like to make?

Mr. GRANT. Mr. Chairman, I appreciate your indulgence. I would not care to make a statement at this time. I would like to introduce one of the panelists at the appropriate time. Thank you.

Mr. HATCHER. Very good. Our next witness is Dr. Kenneth Clayton, Acting Administrator, Agricultural Marketing Service, USDA, here in Washington. Good to see you again, Dr. Clayton.

For you and all the witnesses, your written statements in full will be made a part of the record and we invite you to proceed however you deem appropriate.

**STATEMENT OF KENNETH C. CLAYTON, ACTING ADMINISTRATOR,
AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF
AGRICULTURE, ACCOMPANIED BY CHARLES BRADER, DIRECTOR,
FRUIT AND VEGETABLE DIVISION**

Mr. CLAYTON. Thank you very much, Mr. Chairman and members of the subcommittee. We appreciate the opportunity to appear before you again—this time to present the Department's views on research and promotion proposals for mushrooms, H.R. 2187 and potatoes, H.R. 2257.

With me today is Charles Brader, Director of the Agricultural Marketing Services, Fruit and Vegetable Division. Mr. Brader will be responsible for administering these programs should they be enacted.

Mr. Chairman, the Department takes the position that we have no objection to industry self-help initiatives that are designed to help producers improve their position in the marketplace. The Department, therefore, has no objection to the enactment of these bills, if amended, to address the concerns which have been outlined in the Department's reports to the committee. Many of the changes which we are recommending for your consideration are designed to facilitate the administration and the enforcement of these bills.

Mr. Chairman, it is the Department's position that when research, promotion, and education programs are enacted by Congress, the long-run interests of the industry and general public are best served when such legislation contains the following features. That such programs be national in scope, representing the collective efforts of industry members nationwide. That they be implemented through an up-front referendum by a majority of qualified persons voting. However, if implemented by delayed referendum, a provision should be made for refunds, either through direct monthly refunds or through some type of escrow arrangement, prior to the issuance of the final order.

That there be an opportunity for industry groups to reaffirm their support of these programs, if requested by at least 10 percent of qualified persons. That there be prompt refunds and confidentiality of refund information. That there be appointment by the Secretary of board members from the industry.

For programs that assess imports, provision should be made for equitable treatment of domestic and imported commodities, the importer representation on the boards and in referenda, and compliance with international trade agreements. That there be a prohibition on the use of assessment funds for false or misleading advertising. That there be a prohibition on the use of assessment funds to influence legislation or governmental policy or action, except in recommending to the Secretary amendments to the order.

That there be direct enforcement authority by the Secretary, including the imposition of civil penalties and cease and desist authority. That there be full reimbursement to the Department from date of petition for an order for costs incurred in administering the program, including startup costs, salaries of departmental personnel, and the cost of conducting referenda. And that there be authority for the Secretary to suspend or terminate a program which the Secretary determines does not carry out the policy of the authorizing statute.

Mr. Chairman, I would like to touch specifically on the issue of full reimbursement of the costs of the Department. For newly authorized commodity research and promotion programs, the Department strongly urges the committee to provide for full reimbursement of costs incurred by the Secretary in implementing and administering such programs, including costs for conduct of referenda. Although the Department has previously absorbed salary and other costs associated with the startup of these programs, the rapidly growing number of programs requires us to redirect staff resources from other critical program areas to handle the heavy volume of work associated with implementation.

The Department is no longer in a position to continue to absorb these startup costs. Moreover, these are industry self-help programs and such costs should be borne by the affected industries, not by the general public.

Mr. Chairman, in turning now to each of the proposals that we have before us today, I would like to briefly address the Department's recommendations beginning with the mushroom proposal, H.R. 2187. H.R. 2187, if enacted, would enable domestic producers and importers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for mushroom research, promotion, and consumer information.

The Department urges the committee to give full consideration to our recommendations to provide, first, full reimbursement to the Department for all startup costs incurred prior to the issuance of the order. Second, to provide for a 60-day period for publication of the proposed order, rather than 30 which is currently provided for in the bill. And a 180-day period, rather than 120, to give the Secretary sufficient time to review any comments that might be received on a proposed order and conduct a referendum. Third, to provide for an expansion of the prohibition against certain uses of assessment funds to include a specific prohibition against the use of such funds to influence legislation. And fourth, to provide direct enforcement authority to the Secretary, including cease and desist authority.

Moving on to the Potato Research and Promotion Act Amendments, if enacted, H.R. 2258, would amend the Potato Research and

Promotion Act to eliminate the refund provision, to provide for assessments on imported tablestock, frozen, processed or seed potatoes, to provide for importer representation on the board, to extend coverage of the act to the States of Alaska and Hawaii, and to extend comparable reporting and recordkeeping requirements to importers as is currently required of domestic handlers.

The bill further provides that any amendment to the plan issued under the amended act would become effective on the date the Secretary of Agriculture issues the amendment, without being subject to a referendum.

The Department strongly believes that major amendments to existing programs, such as proposed by H.R. 2257 for elimination of refunds and assessment of imports, should be subject to an up-front referendum. In the alternative, a delayed referendum which allows for refunds of assessments prior to the referendum would be acceptable.

If provisions are included to assess imports of potatoes and potato products, the bill should be further modified to permit importers and domestic producers to participate in a referendum on the amended plan, as well as any future amendments to the plan. The bill should also be modified to provide that any amendments to the plan should become effective no earlier than 60 days after issuance.

Mr. Chairman, under the currently authorized Potato Research and Promotion Program assessments on potatoes harvested in the United States are imposed only on potatoes for food uses and seed potatoes. The administration urges modification of the categories of imported potatoes which would be assessed to assure the same coverage for imports as for domestic products. Discriminatory treatment of imported potato products will violate our obligations under the General Agreement on Tariffs and Trade, as well as under the United States-Canada Free-Trade Agreement.

Mr. Chairman, this concludes my statement. I would be happy to respond to any questions that you or other members of the subcommittee might have.

[The prepared statement of Mr. Clayton appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you for your testimony, Dr. Clayton. Have there been any other research and promotion programs that have been amended to delete the refund provision like the potato industry is seeking to do in this resolution?

Mr. CLAYTON. Mr. Chairman, the only one I am aware of would be our Egg Research and Promotion Program. Legislation was passed, I believe, last year which provided that the refund provision could be eliminated. However, I think it is significant to note that the decision on that will occur through a referendum. The legislation last fall not only provided that elimination of refund would be possible, but also set a timeframe that a referendum should occur within 18 months after passage of the legislation to allow egg producers an opportunity to vote up or down on that particular issue. We have not yet held the referendum, but some time within the next several months that will occur.

Mr. HATCHER. Is that the only instance that you are aware of?

Mr. CLAYTON. Yes, sir.

Mr. HATCHER. Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman. Dr. Clayton, I appreciate your coming back to the subcommittee today. Last week when you were here on another issue I asked you for some examples of the research projects that were initiated under the various research and promotion orders. I wondered if you would comment on that here today?

Mr. CLAYTON. Mr. Emerson, I did do a bit of homework on that issue as a matter of fact. Let me cite just a few examples for you, if I could. Perhaps starting with our Egg Research and Promotion Program. One study which I think was rather significant on the research side was an examination of the cholesterol and other nutrient values of the average large egg. The results of that work, in fact, have been included in the report which the Department puts out advising consumers and others who are interested about the nutrient value of various foods.

Also in the area of eggs, the egg board who contracts to do that work has put together a nutrition education computer program which is used by school children for ages 6 through 10 with the basic objective of developing nutrition awareness among younger people and doing it in a way which is rather creative by invoking the use of a computer. This captures the imagination of the younger people who would be involved in that.

The egg people have also put out a variety of cookbooks with information for consumers and for food editors of various media outlets. They have developed a variety of brochures and other informational pieces on general nutrition and the relationship of dietary cholesterol in heart disease to cite an example.

In the dairy area, there have been quite a significant number of research activities undertaken since that program was put in place in 1983. I can cite you a few titles of some of the work which has been done there. In the area of developing new products, for example, there has been work done looking at genetic engineering as it relates to reduced cholesterol starter cultures to develop things like yogurt and other products. There has been work done looking at the development of new whipping foaming agents using milk protein plants. In the area of nutrition research, there has been work done on the generation and the fate of natural antitumor promoters in milk which is a very significant health-related kind of activity.

There are others which I could cite but I think they basically make the point, I think as I indicated the last time I was here, that under the Dairy Research and Promotion Program, one of the requirements which the Congress placed on that program was an annual report be provided to Congress. I have a copy of last year's with me, but this year's, in fact, I think was sent up just a few weeks ago and is probably floating around in your staff's desk somewhere, but would be available to you.

Mr. EMERSON. In reviewing your testimony today, it seems that for the most part the Department suggestions are technical in nature. However, would you explain the concern that you have about the potato amendments with regard to what is assessed and the differences between domestic and imported potato assessments?

Mr. CLAYTON. Yes, sir. The concern as we talked the last time is, from a trade standpoint, it is very critical that one have comparable coverage between the assessment process for an imported product versus what is occurring for a domestic product. In the case of potatoes in particular, the Potato Research and Promotion Program provides certain exemptions. One exemption in particular has to do with other nonhuman food purposes to which potatoes might be put, including particularly starch. And I think we need to be very careful in the language that we choose as it relates to coverage of imports that we not attempt to assess any type of imported potato or potato product which is not assessed domestically. And there is an example or two where that could be the case if we do not choose our words carefully, I think.

Mr. EMERSON. Mr. Chairman, I see my time has expired. I have a couple more questions. Could I proceed to ask them rather than submitting them in writing? Thank you.

On this same matter, Dr. Clayton, it is my understanding that the sponsor's goal is to have the assessment apply in the same manner to the product that is now assessed domestically and what is proposed to be assessed, that is, imports. Does the Department have equivalency tables to facilitate this process?

Mr. CLAYTON. Mr. Emerson, I think we could certainly do that. Apparently the question that was raised under the original potato bill was about whether starch, for example, would go to a food or industrial use, or if there was a determination to simply exclude starch. Potatoes going to starch are excluded from domestic assessment. One could apply that same logic arguably to imported categories; that would be one way to deal with it. The other way would be to develop some conversion factors which could be used.

Mr. EMERSON. Finally, do any of the research and promotion programs assess producers on a sliding scale relative to their production level? Is there any reason that you can think of to assess in this manner? Are not the benefits to producers in research and promotion programs related to the production, the greater the production the greater the benefit?

Mr. CLAYTON. Mr. Emerson, there are no programs now established which have any type of graduated assessment scale. I think, in concept, there probably is no reason why one could not do that. One of the critical issues would be whether that would unnecessarily complicate the assessment procedure, the recordkeeping and so forth. I do not have any judgment on that. I would think that would just be a critical question.

As to the benefits achieved under the program, I am not sure I am in a position really to suggest to you whether the benefits in any way can be differentiated among contributors to an assessment program. Clearly the industries which now have assessment programs or checkoff programs seem to feel rather strongly that the programs in total are beneficial.

Mr. EMERSON. Thank you very much.

Mr. HATCHER. Dr. Clayton, we have, as has been alluded to by Mr. Emerson and Mr. Panetta, a good bit of discussion or dissension even among mushroom growers. Maybe not in numbers, but some very large producers do not agree at this point on what has been proposed by others. Are there any marketing orders where

the voting power is based on market shares as opposed to each individual producer having a vote? Or in setting up the board is it weighed in any way for any of the commodities?

Mr. CLAYTON. Under our marketing orders, there ultimately is provision for first a voting count by participants, but then also there is an inclusion of volume of production as a related factor.

Under the research and promotion programs there are some programs with similar arrangements. There are dual referenda criteria for making amendments to or implementing research and promotion programs. These criteria are along the same lines I was just mentioning in terms of marketing orders where provision is made for both a count of participants, as well as a volume of production measure.

Mr. HATCHER. I have been advised that five producers, five corporations produce over 50 percent of the mushrooms in this country that are sold fresh, and I assume we will hear more about that today. But I have been given that figure that maybe they could produce 55 percent. Do we have any other commodity with research and promotion order or marketing order that is anywhere near that kind of production ratio for fruit producers?

Mr. CLAYTON. Mr. Chairman, on the existing research and promotion programs, we do not have any cases where there would be that degree of concentration of production. I believe, however, that under the Lime Research and Promotion Program which is currently being considered, that there would be a situation where there is a fair degree of concentration among one or more producers in terms of percentage of production. Certainly under some of the marketing orders, we could also point to situations where there is a significant degree of concentration of production—almonds, cranberries, walnuts, and perhaps citrus.

Mr. HATCHER. Mr. Grant, do you have any questions?

Mr. GRANT. Thank you, Mr. Chairman. Just one, Dr. Clayton. It is not the policy of the USDA to encourage total domination of a market though by particularly large growers, is it, Dr. Clayton?

Mr. CLAYTON. No, I do not think we have any such policy.

Mr. GRANT. I did not think so. Thank you.

Mr. HATCHER. Thank you very much, Dr. Clayton and Mr. Brader. Our next witness will be Mr. James Ciarrocchi, president of the American Mushroom Institute, Kennett Square, Pennsylvania. He is accompanied by Mr. Charles Harris, executive director of the American Mushroom Institute, also from Kennett Square. We would like to welcome you here and look forward to your testimony.

STATEMENT OF JAMES CIARROCCHI, PRESIDENT, AMERICAN MUSHROOM INSTITUTE, ACCOMPANIED BY CHARLIE HARRIS, EXECUTIVE DIRECTOR

Mr. CIARROCCHI. Thank you very much. Good morning, Mr. Chairman and members of the subcommittee. I am James Ciarrocchi, the third generation mushroom grower and presently serving as president of our trade organization, the American Mushroom Institute. I appreciate this opportunity to testify in support of the

Fresh Mushroom Promotion, Research, and Consumer Information Act, H.R. 2187.

The American Mushroom Institute, founded in 1955, is a non-profit national trade association located in Kennett Square, Pennsylvania. The American Mushroom Institute's major source of income is from dues paid by 106 growers and 165 associate members. We do not receive any financial assistance from local, State, or Federal Government sources.

We provide many services to our members, including news publications, Government relations and research projects. In order to provide the subcommittee with a better understanding of our industry, let me briefly discuss some of our history, as well as the current makeup of the mushroom industry.

When the AMI was founded in 1955, there were more than 700 growing operations in the United States. In 1988, only 356 growers remained. This represents a 50 percent loss in growing operations since 1955, even though at the same time period per capita consumption increased from 6 ounces to 3.6 pounds. As the figures indicate production has increased while the number of producers has dramatically decreased.

The consolidation of our industry has resulted in loss of many who played an important part in the development and growth of the U.S. mushroom industry. We believe this legislation will help unify industry so that we may collectively identify and address the challenges of the future. By pulling together and organizing the resources that we have as an industry, we can accomplish much more than could otherwise be achieved through single attempts by individual companies.

The fact the growers will have administrative and decisionmaking duties under this legislation, it will allow mushroom producers to formulate programs to respond to a variety of changing forces in a competitive world through marketing.

The proposed council to be appointed by the U.S. Secretary of Agriculture will represent a true cross-section of the entire industry and specific concerns of each will be addressed. We are confident that such a forum will be of the utmost benefit to this industry.

Another factor that has influenced the mushroom industry over the years was the decimation of the processed industry by imports in the last decade. This fact has been confirmed by the International Trade Commission. This is one reason why the AMI supports the inclusion of import assessments in this measure.

While imported fresh mushrooms are not currently at levels which would trigger assessments, we certainly feel this provision is necessary to provide the industry with stability and equitable treatment as concerns imported products, particularly in light of the recent trade liberalization activities.

Of course, importers will receive the same treatment as the domestic industry, such as the 500,000 pound exemption and representation on the Mushroom Council.

Another component of the bill that we feel is very important is mandatory participation. The domestic cultivated fresh mushroom industry has embarked on several voluntary promotion campaigns over the years. AMI, itself, has attracted State matching funds for

several efforts. For AMI, a lesson from every one of these promotion efforts has been unreliability, inefficiency, and inequities of voluntary participation. The fresh cultivated mushroom industry will benefit as a whole from a successful promotion campaign. Thus, the cost to the industry should also be borne as a whole.

In addition, a prohibition of the use of assessment funds for lobbying activities, as suggested by the USDA, is supported by the AMI. As I mentioned earlier, one of the services provided to AMI members is our Government relations program. Thus, it is not our intent to have additional funds expended by the Mushroom Promotion and Research Board on Government relation activities.

We believe that every sector of our industry will benefit from a nationally coordinated research and promotion program. The board of directors of the American Mushroom Institute has endorsed the concept of H.R. 2187, and we are hopeful that Congress will allow the fresh mushroom growers the opportunity to establish a research and promotion program of their own. Thank you very much.

[The prepared statement of Mr. Ciarrocchi appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you, Mr. Ciarrocchi. Do we have many imported mushrooms in our fresh market in this country?

Mr. CIARROCCHI. Not at the present time, no.

Mr. HATCHER. And that has to do with the fact that they are highly perishable, I guess?

Mr. CIARROCCHI. Correct.

Mr. HATCHER. You shifted your production? Or this country has, I believe you said, from 75 percent for perishable, to just the reverse of that now?

Mr. CIARROCCHI. Correct.

Mr. HATCHER. Over what period of time was that transition?

Mr. CIARROCCHI. Since the late 1960's, early 1970's.

Mr. HATCHER. Do you perceive a threat from imported mushrooms entering the fresh market from anywhere in the near future?

Mr. CIARROCCHI. Not in the very near future, but the threat is always out there.

Mr. HATCHER. What kind of associate members do you have? Would that be processors or retailers or wholesalers?

Mr. CIARROCCHI. Combination of everything from suppliers who would supply the industry with certain raw materials to supermarket stores to insurance agencies. It is a very wide variety of membership.

Mr. HATCHER. Are you completely a Pennsylvania organization or primarily a Pennsylvania organization?

Mr. CIARROCCHI. Primarily Pennsylvania.

Mr. HATCHER. But you do have members who are outside the State?

Mr. CIARROCCHI. Pardon me?

Mr. HATCHER. Do you have members who are outside the State?

Mr. CIARROCCHI. Yes, we do have members in Delaware and some other States, and Maryland.

Mr. HATCHER. In your statement, I believe you said there are some 300-plus producers in the country, now, of mushrooms?

Mr. CIARROCCHI. Correct.

Mr. HATCHER. How many of those, if you have an opinion, support this legislation?

Mr. CIARROCCHI. On a percentage basis, I would say probably close to 80 percent would support the legislation, if not higher.

Mr. HATCHER. What percent of the volume would that represent? Have you thought in those terms?

Mr. CIARROCCHI. No, I really have not thought about it in volume terms.

Mr. HATCHER. Do you have any really large producers in your group in Pennsylvania? Or are they almost all very small or medium?

Mr. CIARROCCHI. It depends on what you consider large producers. Yes, there are two—my family is one and there is another farm that produces quite a large amount. But basically, we are made up of a lot of small farms. The 500,000, the 2 million pound farms. That is large percentage of our membership.

Mr. HATCHER. How many producers do you have in Pennsylvania—over half of the U.S. total or?

Mr. CIARROCCHI. About 125.

Mr. HATCHER. So about a third?

Mr. CIARROCCHI. About a third, yes.

Mr. HATCHER. Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman. Production of mushrooms over the past 5 years has remained fairly constant. Do you think that the production and demand are in line or is there room to increase the consumer demand for your product?

Mr. CIARROCCHI. One of the things that our industry has done over the years, has been we kind of put the cart before the horse with production. We have always produced more to reduce costs and we have never really took a good strong look at promotion. Increased production will be there. Growers will always find ways to grow more product out of the square footage and get more efficiency out of what they have.

Mr. EMERSON. Well, I have noticed in some of the figures we had before us, the per capita consumption in Europe is so much higher than it is here. I would expect that with adequate promotion, my own guess, is that there would be tremendous opportunity for increased demand here. I am very surprised at what the differential is in Great Britain, for example, than what it is here.

Mr. CIARROCCHI. Even in Canada also. It is very very high compared to the United States.

Mr. EMERSON. Would you describe a typical mushroom producer for us. I realize that there are producers at both ends of the spectrum, but who is a typical producer of fresh mushrooms?

Mr. CIARROCCHI. A typical producer would be a family owned operation quite like my own family's operation. I would say we are fairly atypical. Maybe a little larger now, but we are fairly atypical whose grandparents—my grandparents came here in the 1900's and worked in the business, and then my father took the business, and he built the business. Now we are continuing on in the same business, so I am a third generation farmer.

Mr. EMERSON. What are the issues essential to the mushroom industry. How do you believe that a research and promotion program can help the entire industry?

Mr. CIARROCCHI. Well, the food safety issue is really the issue that would hurt my people and the American Mushroom Institute worse than anything else, if anything happened. We have a history, with the botulism scare maybe 20 years ago, I believe it was. And that decimated our industry, but we survived, but a lot of others did not though.

Mr. EMERSON. Let me just back track to my previous question. For the record, I think it would be interesting to note that in Canada the per capita consumption of fresh mushroom is 5.7 pounds; in Great Britain it is 6.8 pounds; and the Netherlands has 8.2 pounds annual consumption of mushrooms. Here in the United States the per capita consumption is only 2.8 pounds. I cannot imagine that our tastes are all that different than the Netherlands, Canada, and Great Britain, so it looks like there is a lot of opportunity for growth there.

Mr. CIARROCCHI. Yes, a lot of it has come from Government subsidized programs in those countries. And with a piece of legislation, we are not asking—this is a self-help program that our own industry is taking upon itself to do.

Mr. EMERSON. Very interesting, thank you.

Mr. CIARROCCHI. You're welcome.

Mr. HATCHER. Let me ask you one other question. Is there a consensus among producers as to how the money should be spent, assuming that the legislation passes and the order is approved?

Mr. CIARROCCHI. I do not think so right now because we have to write an order first and we have to see where our needs are going to be in the industry at the time we get the order done.

Mr. HATCHER. A concern has been expressed to me by some producers that they do not think that there is any intent to use the funds for promotion of consumption. Does that statement have any merit?

Mr. CIARROCCHI. No, it does not.

Mr. HATCHER. I did note your comment about food safety and I am sure that would be one issue you would want to address with the funds, is that correct?

Mr. CIARROCCHI. That is correct.

Mr. HATCHER. Do you think it will be used for promotion of consumption as well or it would not or that is just an unsettled item?

Mr. CIARROCCHI. Sure, I would think it would be used for promotion of consumption, along with food safety and other problems we come up with in our industry.

Mr. HATCHER. How would you answer a large producer, say the largest producer or the third largest producer or whatever, who said that they did not think that any money spent from this order if it is adopted would benefit their sales in any way. How do you respond to that?

Mr. CIARROCCHI. Basically we are going to give more information to the consumer to make a better choice of the product. As far as the large producer is concerned, he will be a part of the whole organization on where we are going to be spending the money as a member of the council.

Mr. HATCHER. Mr. Emerson.

Mr. EMERSON. Would the gentleman yield? I will just ask one question. Are there producers who have a fixed share of market

who may be satisfied with that and would not want any more, who just produced at a certain level, and therefore might have the view that involvement in this program was simply cutting into their profit margin? Or is everyone always looking for an expanded market?

Mr. CIARROCCHI. I think everyone is looking for an expanded market and we are trying to increase the consumption of the product also. We have studied in our industry—we will get more light users to become medium users and the more heavy users to become even heavier users of our product. Because as you stated in those per capita consumption figures of how low they were and how high they were in other countries. There is plenty of room for growth in our industry. Our industry is just a baby right now.

Mr. EMERSON. Thank you.

Mr. CIARROCCHI. You're welcome.

Mr. HATCHER. Thank you very much for your testimony. On the next panel we have two witnesses and I will ask Representative Grant to introduce the first.

Mr. GRANT. Thank you, Mr. Chairman. I am pleased to be here today to introduce Dennis Zensen. Dennis is chairman of the American Mushroom Council. He is from Quincy, Florida, which is in my district and I think is recognized to be a leader in the production of mushrooms. I am excited about the proposal that is before your subcommittee today. The legislation, I believe, is both pro-farmer and proprocessor. And the genius of this thing is that it is a product that is self-financing to be used for research and promotion, among the industry without asking for Government assistance other than for authority to do so is admirable.

As it was pointed out earlier, fresh mushroom sales had doubled in the last 10 years in this country, but there are still some people that are afraid of mushrooms. And some people, as the last witness testified, are still concerned about the scare that is 25 or 30 years old and some are concerned about a scare that is 2,000 or 3,000 years old. So the promotion of fresh mushrooms as an edible commodity is a worthy thing. The American consumption is half of that in Europe per capita.

We need to track other growers to meet this demand. There has been a steady decline in all of our districts in small farms. This is something that they can grow. The so-called regional markets have developed because of the short shelf life of mushrooms. And so I can understand why there are a lot of producers in Pennsylvania because it is close to large metropolitan areas generally, a few hours drive away. We have lost half of our growers over the past 30 years and obviously we have a product where there is a great demand in Europe. There is not the demand here for the product. In large part it is because we do not have the kind of regional growers that can supply the mushrooms.

As far as research is concerned, there have been concerns over claims of inherent carcinogens in mushrooms. Obviously that needs attention and it needs specific attention. This committee is going to be dealing specifically with food safety. We could envision a great deal of research on what are safe fungicides. There needs to be further research on genetic enhancement, improve the quality of mushrooms, obviously research on disease control. I can think of

many many other reasons why this proposal is worthy of approval by this subcommittee. And it gives me a lot of pleasure to introduce the gentleman from Florida and from my district who is leading the fight to do so, Dennis Zensen. Thank you, Mr. Chairman.

Mr. HATCHER. Thank you. Mr. Zensen, we welcome you and we also welcome Mr. Shah Kazemi from Monterey Mushroom, Inc. in Capitola, California. We will hear first from Mr. Zensen.

STATEMENT OF DENNIS ZENSEN, CHAIRMAN, MUSHROOM COUNCIL

Mr. ZENSEN. Mr. Chairman; Congressman Grant, thank you very much for coming in this morning and making your introduction and for your support of H.R. 2187.

I am Dennis Zensen of Sylvan Foods which has mushroom farms in Florida and Pennsylvania. Today I am speaking as chairman of the Mushroom Council on behalf of what we believe is in the best interest of the mushroom industry.

Over 2 years ago, a group of individuals who work in the mushroom industry came together to discuss its future. Present were large and small growers—members of the industry trade association and representatives of larger companies, including one that now objects to H.R. 2187, truly a broad cross section of the industry. Our subsequent discussions and research led us to the conclusion that the fresh mushroom industry overall could best be served by national, federally sanctioned promotion, research, and consumer information program. At that time the Mushroom Council was formed to pursue this goal.

We developed a proposal that is embodied in the legislation you are considering today, which would allow mushroom growers to decide whether they would like to develop, finance, and operate a nationally coordinated program for fresh mushroom promotion, research, and consumer information.

Throughout this entire process, we have made repeated efforts to reach out to include all individuals and companies in this industry, and continue to do so in order to gain even broader support.

H.R. 2187 would provide for a fresh mushroom order to be issued by the Secretary of Agriculture, but before the order could go into effect, before any assessments are collected, it would have to be approved by a majority of eligible mushroom producers.

Mr. Chairman, let me outline briefly why we believe this legislation is needed. In simple terms this industry faces many current and future challenges. We have the opportunity through the program that could result from the passage of this legislation and its successful referendum to address them on an industrywide productive and cooperative manner.

Our challenges include: one, we are now competing for shelf space and the consumer's food dollar. In order to successfully compete with other fruits and vegetables, a higher industry profile is needed. Only a few years ago, there were less than 100 produce items on the average retail supermarket. Today there are over 200. This fact alone means a greater effort to distinguish our product is needed to stay competitive.

We have heard a lot about food safety issues this morning. We need a coordinated effort desperately now to engage in the kind of research and consumer education that will prevent some of the things that we have talked about earlier that have hurt us and other commodities in the past and are related to this whole food safety issue.

Over the past few years, we have had a strong consolidation occurring within our industry. We have lost more than 100 of our growers in the last 2 or 3 years alone. Many of these growers and many that are still in the industry have been the backbone of our industry for more than 30 years. Corporate entities have come and gone, but our backbone has been the independently owned farm. We believe that this legislation will give our remaining backbone, our independent growers, the opportunity to stay and prosper in this industry.

Mr. Chairman, the items I have just highlighted are not the concern of just one single company, brand, or grower. How we as an industry respond will effect everyone who grows mushrooms. This leads us to questions as how the money will be spent. The legislation is written to ensure that the money will be used in efforts for fresh mushroom promotion, research, and consumer information. Exactly how this will be accomplished is left to the growers nominated by the industry and selected to serve as the administrative body. It would seem to be presumptuous of me today to say exactly how these moneys would be spent. Because a council is yet to be formed, and their input would be requisite in making this determination.

What we have done is highlight the areas that we feel present problems and opportunities to the industry, and we would hope that the Mushroom Council that would eventually be formed as a consequence of this legislation would look at the 2 years of research that we have done and would start off accordingly as to how they would propose to spend the funds.

We are asking Congress to give mushroom growers the opportunity to choose if they want a cost-efficient and effective way, on an industrywide basis, to participate and share the benefits of a program that can lead us successfully into the 1990's.

As you know, Mr. Chairman, members of the Mushroom Council met with others in the industry and committee staff yesterday. We feel we made significant progress and offered significant concessions to meet their concerns. Among the compromises we offered are to add a production component to the referendum, so that we would have a referendum consisting not only of a majority of voters but a majority of pounds. We also offered to adjust the assessment rate.

Basically we agreed to lower it substantially, particularly in the first few years. And to add a reaffirmation vote or a sunset clause to the legislation that would force a referendum to continue it in addition to the one that is now in the bill which gives us the opportunity to call for one if we want to. We hope that all parties will continue to work toward a unified position.

Mr. Chairman, we will also be pleased to work with this committee, the Department of Agriculture, and others in the industry to make the modifications that may be necessary to strengthen the

legislation. But we do ask the committee to move expeditiously in its consideration and I thank you for letting me testify this morning.

[The prepared statement of Mr. Zensen appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you, Mr. Zensen. Mr. Kazemi.

**STATEMENT OF SHAH KAZEMI, PRESIDENT, MONTEREY
MUSHROOMS, INC.**

Mr. KAZEMI. Good morning, Mr. Chairman and members of the subcommittee, thank you for this opportunity to testify in support of H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act.

Mr. Chairman, I am the president of Monterey Mushrooms, headquartered in Capitola, California. Monterey is the largest national marketer of fresh mushrooms with approximately 74 million pounds of fresh mushroom sales annually. We market our product under the First Harvest label.

In addition to our Capitola office, the company is comprised of five fresh mushroom growing facilities, three processing plants, two spawn plants, one supplement plant, and four sales offices in seven States. We employ approximately 2,000 people and have annual sales of over \$125 million.

As a large marketer, my company has the most to benefit or lose from the situation Dennis just outlined. We spend an enormous amount of money on promotion, marketing, consumer education, and research. Yet we recognize the benefits provided by this legislation and the fact that the programs established would complement our ongoing activities. We are very proud of the produce we grow. Each of us today will tell you we grow the best mushrooms, but all of us have to be concerned about the overall image of our product and our industry.

Monterey Mushrooms is a successful, profitable business because each component of the company works together. This is exactly what I believe the promotion program can do for mushroom growers on an industrywide basis. On those areas of mutual concern, we can cooperate in unity. And past that point, we can compete in a free-market atmosphere.

Mr. Chairman, I will be paying my proportionate share and as much as any company of my size. I would like to note, however, that the mushrooms are my company's only business interest. We are not a huge, diversified company with a host of different business interests that add to our bottom line. While mushrooms may be only a small part of some companies' total operation, for most of us, mushrooms are our entire business. The future of the mushroom industry is the key to our prosperity and profitability. Therefore, we are much more dependent upon and committed to its future success.

I personally feel there is a great need to invest in the future of the mushroom industry. Seed money now will help ensure a strong industry tomorrow, one that can sustain itself and prosper by addressing ever-changing industry concerns. Problems such as food safety, the need to maintain the availability of chemicals that we

must have for mushroom production, and the need to improve the public awareness of the nutritional benefits of our product are but several concerns which we must address if we are to stay competitive.

We in the mushroom business have an outstanding product that is attractive to consumers. We have the good fortune of being in a growth industry. However, the food industry is very competitive. The corporate food company giants spend billions for new product development and promotion. Many small- to medium-sized producers cannot afford the research and development and promotional costs on their own. What they can do, however, is join with other producers to advance our product together, so that the cost is sufficiently spread out and not unduly borne by any one company.

Because it is not in the interest of one company to provide the resources and programs needed by the entire industry, we are asking Congress to give the mushroom producer the same kind of self-help legislation that has already been given to producers of other agricultural commodities.

I thank you for your time and for the opportunity to testify. Thank you.

[The prepared statement of Mr. Kazemi appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you, Mr. Kazemi. It is interesting to hear you testify as the largest producer, but you think this will benefit the entire industry?

Mr. KAZEMI. Yes, sir, I do.

Mr. HATCHER. You hit on food safety, promotion of that. Do you also think that funds should be spent under this order for the promotion of consumption to develop the market?

Mr. KAZEMI. Yes, sir, I do. Currently 37 percent of the population do not use mushrooms at all. Mushroom is an old industry, but is really a new food item and the opportunity for growth and education is significant.

Mr. HATCHER. Thank you. Mr. Zensen, is the Mushroom Council nationwide?

Mr. ZENSEN. Yes, Mr. Chairman, it consists of members coast to coast, top to bottom. The Mushroom Council represents every component of our industry with two exceptions, now they being the two that have problems with this bill.

Mr. HATCHER. Have you attempted over the past couple of years to try to bring in all elements of the industry under the umbrella of the council and to work together?

Mr. ZENSEN. The Mushroom Council was formed only a little over 1 year ago when it was a consequence of a 2-year effort that the industry undertook to try and determine whether we could do anything to provide ourselves a better future and to address the challenges and problems that we could already see coming. During that effort, the large company now that has a problem with the bill was a member of that effort and contributed greatly to it, and I think was always supportive and in agreement with the conclusions that we reached. The Mushroom Council came after that to actually implement the recommendations of that program which was an exhaustive study of our industry.

Mr. HATCHER. Are you a producer?

Mr. ZENSEN. Yes, sir. I represent the third largest company in the United States in mushroom production.

Mr. HATCHER. What is the name of that?

Mr. ZENSEN. Sylvan Foods. I have a farm in Florida and the largest single farm in the United States in Pennsylvania.

Mr. HATCHER. I see. Do you have farms in other parts of the country?

Mr. ZENSEN. No. Just those two.

Mr. HATCHER. Does anybody else produce mushrooms for the fresh market in Florida?

Mr. ZENSEN. Yes, Lion Foods has a farm near Orlando. They are supportive also of this effort and are a member of the Mushroom Council. They have another farm near Princeton, Illinois.

Mr. HATCHER. Does anybody else produce in Florida besides these two?

Mr. ZENSEN. One very small farm north of Orlando, independently family owned farm.

Mr. HATCHER. Does anybody besides Campbell produce mushrooms for the fresh market in Georgia?

Mr. ZENSEN. No one that I am aware of.

Mr. HATCHER. Alabama? Do you have any producers there?

Mr. ZENSEN. None that I am aware of.

Mr. HATCHER. Mr. Emerson.

Mr. EMERSON. No questions.

Mr. HATCHER. Mr. Grant.

Mr. GRANT. Thank you, Mr. Chairman. Mr. Zensen, how many pounds of fresh mushrooms did Sylvan produce last year?

Mr. ZENSEN. We are currently and it would have been about the same last year at about 75 million pounds.

Mr. GRANT. How much would the assessment under this act cost Sylvan Foods per year?

Mr. ZENSEN. Depending upon what year it is, let us say it could be—let us say a penny. If we got to a penny, it would be \$750,000.

Mr. GRANT. So you would be paying \$750,000 a year last year on the second year of the assessment; is that right?

Mr. ZENSEN. Yes.

Mr. GRANT. I do not know if you have these figures or not. Could you tell me what is the average net profit per pound for fresh mushroom growers? Do you have any indications on that?

Mr. ZENSEN. I do not know. I was interested in looking at some of the testimony that has been put into the record. It suggested it was close to 2 cents. That may or may not be accurate of the industry as an average. But I can tell you that within my company and many others I am aware of, it is considerably better than that.

Mr. GRANT. Better than?

Mr. ZENSEN. Better than 2 cents a pound.

Mr. GRANT. Better than 2 cents a pound. So that the assessment is not equal to the net profit that you would have per pound?

Mr. ZENSEN. Not within my company and not within companies that I have a personal awareness of.

Mr. GRANT. Do you think it would be considerably more than that or approximately a half more?

Mr. ZENSEN. The net margins that we enjoy are considerably more than that, many times that.

Mr. GRANT. Mr. Chairman, I have a few more questions, but I know we have to vote.

Mr. HATCHER. Do you want to try to finish in the next 4 or 5 minutes or would you prefer to take a break and come back and finish?

Mr. GRANT. I am at your pleasure, Mr. Chairman. It is going to take me more than 4 or 5 minutes.

Mr. HATCHER. OK, then let us break right now for the vote. We will be back within 10 minutes or so. This subcommittee will be in recess.

[Recess taken.]

Mr. HATCHER. The hearing will come to order. Mr. Grant.

Mr. GRANT. Thank you, Mr. Chairman. Mr. Zensen, if I could follow-up just briefly. The average net profit per pound and of course you do not have any indication for what it is for other growers perhaps, but could you give the committee maybe an average or what you consider would be an approximate? Is that a fair question?

Mr. ZENSEN. I would like to try and respond to it a little differently. Our industry has a high capital requirement to get into it, and we have a high risk profile. Our crops are subject to problems as most of agriculture is from disease or pests or strains that lose their integrity, problems with labor, and maybe they do not get picked in time, and that type of thing. It is a relatively high risk, high capital, intensive business. I would think that for that kind of business in general, if one did not have the opportunity in orders of magnitude of at least 10 percent margins, it is the kind of business you would do well to stay out of.

Mr. GRANT. But the net profit per pound is many times on the average greater than the assessment would be even under the maximum in the bill?

Mr. ZENSEN. That is true in my company. I believe it would be true in Shah's, but he can speak for himself, and many others that I would have a personal awareness of.

Mr. GRANT. Do you have any plans or does the council have any plans for the way that the assessment moneys would be spent?

Mr. ZENSEN. Basically, what we did when we ended the 2-year study—

Mr. GRANT. And if you could, could you tell me how that would benefit the large growers, as well as small growers?

Mr. ZENSEN. Basically, what we did was identify a number of areas that we felt would present, currently and in the future, in an increasing way, either a challenge or an opportunity to the industry. One of them would be the data that we spoke to earlier this morning about consumption in our country versus that in other places.

We have a situation, for instance, that roughly 16 percent of the people that buy fresh mushrooms in the United States consume about 60 or 70 percent of what is consumed. So there is a huge opportunity there to bring in new consumers. That was an opportunity.

On the problem side, for instance also on the opportunity side, if you will, we felt a strong need to bring unity to what has been a very fragmented and disorganized industry with a number of small

growers scattered coast to coast. It has been historically very difficult to ever get us together on anything long enough to really address some of the challenges that have faced us. So we saw that as an opportunity through this legislation or a way to challenge a problem, if you will.

On the problem side, we identified—even over 1-year ago when we made our final report to the industry—but then sponsored the Mushroom Council to try and go after this kind of legislation, as well as the strong trade association which is a twofold recommendation.

For instance, the food safety thing that we now face, we could see it coming, although now it is coming very fast. And I would expect probably in the first year or two, assuming that we have the opportunity to have this research and promotion order, that if things do not change from the situation we have today, a lot of our first available moneys in the first year or two will undoubtedly go into the food safety issue. This is very serious for a lot of commodities and it is particularly serious for ourselves right now.

Mr. GRANT. On the promotion side, you are the third largest producer. Why do you not just do your own research and market development? Why do you not develop your own brand instead of doing generic?

Mr. ZENSEN. We do a lot of that and we spend a lot of money to do that, as does Shah Kazemi's company or Campbell Soup or any other. What we are talking about is a dimension really beyond that when there are many times that we need the ability to speak as an industry in an united way, for instance on the issue of food safety. And the food safety problem is really—the challenge is beyond any one of us. And it is the type of thing in our industry small to begin with. If we cannot consolidate and focus in a united way, I think you could well undo a lot of the industry as we now know it. So that is an issue where no one of us can do it alone.

As we talk about consumer awareness and nutritional awareness of our product to promote that in order to make people aware of that on a national scale, again, it is very difficult for any one company to do that. In what I will call a generic sense, just to make people more aware of mushrooms, give them hopefully a propensity to at least try them, whether it is my brand or whoever else's.

Let me follow-up with that with our brand advertising, our own marketing efforts to try and encourage or to capitalize on what we can establish in a generic way to give people the idea that they might even want to try them.

Mr. GRANT. I assume my time is up, Mr. Chairman. I appreciate your indulgence. I have some more questions, but I am at your disposal.

Mr. HATCHER. Please proceed.

Mr. GRANT. Thank you, Mr. Chairman. I will be brief though. If most of the effort, Mr. Zensen, is going into research at this time, what would be advertising part of this budget—and let us say it was \$4 million that you collected totally—would the advertising budget be large enough to have any real impact on demand?

Mr. ZENSEN. If we could get to the point, we would not really get there for 3 or 4 years because we now have the assessment kind of redone after our meeting last night. But if we could get to that

point, and if the food safety thing were not consuming an inordinate amount of it, which it could, but I hope that it would not by that time, the \$3 to \$4 million for the kind of thing I am talking about which would be more generic promotion, more trade-oriented promotion, consumer attitude research, trade attitude research in order to spend those moneys intelligently through that channel. We believe would be effective, but it remains to be seen.

And the Mushroom Council that would come as a consequence of the order would have to make those decisions. In the process of doing our homework for 2 years to decide whether we could be effective in that regard. We did interview many many commodities with similar orders, and we heard generally from all of them that this kind of effort, which in our case would not be a multimillion dollar-type expenditure, provided the best value for every dollar that they had spent, more so than in a direct consumer effort to go on television, to get someone to buy more mushrooms. A lot like raisins or citrus or potatoes have done in a generic sense.

Mr. GRANT. If I could recommend, I heard on the radio once—it has been years ago—they had a little brief burst of advertising for prunes and they were really well done and very comical. If you can imagine how you would advertise prunes, but it was a wonderful thing. I just do not know how much money that would take.

Mr. KAZEMI, where are your mushroom farms located?

Mr. KAZEMI. We have two farms in Watsonville, California. We have a farm in Morgan Hill, California. We have a farm in Tennessee, that is Loudon, Tennessee. And we have a farm in Madisonville, Texas.

Mr. GRANT. Are those farms in California, northern California?

Mr. KAZEMI. Yes, sir.

Mr. GRANT. Are you fearful that the funds that would be collected as a result of this act would be spent disproportionately to benefit growers in regions other than where the most mushrooms are grown now, northern California and Pennsylvania? What about your Tennessee farms and your Texas farms?

Mr. KAZEMI. No, sir. I do not have any concern in that regard. I feel that is contingent on what kind of program is developed by the committee. Our intent is to have a fair and equitable program that serves small as well as large companies.

Mr. GRANT. Are export sales exempt from the assessment?

Mr. KAZEMI. Yes, sir.

Mr. GRANT. They would be under the provisions of this act? It is not real clear to me.

Mr. KAZEMI. Currently there is minimum export. There is some going to Canada, but I assume if they are not consumed domestically, they would be exempt.

Mr. GRANT. We are talking about fresh mushrooms?

Mr. KAZEMI. Yes.

Mr. GRANT. Have you had any research or have you asked any of your people to do research on whether or not that is consistent with GATT or other trade agreements that we have had?

Mr. KAZEMI. We do not know that.

Mr. ZENSEN. It may not be. There has been some testimony 2 weeks ago in that regard in a Senate hearing that suggests that we are going to have to look at that.

Mr. GRANT. Thank you very much. Mr. Chairman, thank you so much.

Mr. HATCHER. Yes, sir. And thank you gentlemen for being here and for your testimony.

Our next witness is Mr. Kirk Leighton, president, Camsco Produce Co., Campbell Soup Co., Camden, New Jersey. We welcome you, and as you have heard your entire written statement will be made a part of the record, Mr. Leighton, and we ask you to proceed as you will.

**STATEMENT OF KIRK W. LEIGHTON, PRESIDENT, CAMSCO
PRODUCE CO., CAMPBELL SOUP CO.**

Mr. LEIGHTON. Thank you, Mr. Chairman and members of the subcommittee. As you pointed out, I have provided a written statement which provides details which I would like to highlight for you today. We wish we could be testifying in favor of the proposed legislation today, however, we oppose the bill for the several reasons we have outlined in our statement and which I will summarize.

Our reasons for opposition strike several fundamental issues. One issue is the need for the legislation. Second is our concern toward some of the undefined programs that we have not found details of, much less convincing reasons for. In addition, we are concerned with the high level of funding proposed in this bill, as well as what we consider to be its inequitable voting and assessment method.

In addressing those issues I would like to point out to the committee initially that the mushroom industry, unlike perhaps some of the other more distressed industries that I know the committee has worked with, is an industry that has enjoyed some rather tremendous growth over the last 10 years. The industry has grown from 230 million pounds a year of sales of fresh mushrooms to well over 450 million pounds over that period. Since 1980, it has annually grown at a rate of 8 percent.

So we are working here with an industry that has doubled its size over the last 10 years—a growth rate, I think few can parallel. It certainly is far different than the situations that have been developed with pork and beef and other such orders where distress and decline was more the watch word than the growth that we have seen here.

I think it is also noteworthy that the per capita consumption talked about here also reflects significant growth over that same period. It also is important to recognize that this business, as I will talk about later, is somewhat regional in its perspective. While the overall average mushroom consumption may represent between 2.5 to 3 pounds per capita depending on the source of data, there are regions with consumption levels of 5 pounds per capita—that is, Eastland, California—similar to levels found in some countries noted by earlier witnesses.

The second issue I would like to address is that of the intended purpose of this money. I think it is important to recognize initially what the cost of this bill represents. It is our understanding that the bill in its second year is intended to charge 1 cent per pound. This represents about 1 percent on the sales dollar of every mush-

room sold. By comparison to other marketing orders that we have reviewed—and certainly do not have the entirety of all of them—this would appear to be a very high assessment level. In fact, at the maximum of 2 cents, we cannot find one that represents that high a mandatory funding level.

In our own case it represents an expense of \$750,000 at the 1-cent level and up to \$1.5 million at the 2-cent level. We then ask ourselves what is the intended purpose of the programs funded by this high assessment? Quite frankly, we have not found a convincing or thorough examination of what those elements would represent. We have heard of marketing programs. It is our view, however, that at the \$4 million level one could hardly wage an effective consumer-aimed marketing program which would meet the seeming objectives of the council at this time.

On the other hand, we have also heard that the funds are for trade-related type marketing programs. But it is our experience in a business that has grown from zero to 70 million pounds over the last 10 years, that a trade-related marketing program without a strong corresponding consumer element, is inadequate. And certainly at the \$4 million, we are on the low side of it being an effective marketing program.

We have heard about food safety efforts, which we at Campbell have certainly supported. We have been very proactive with the industry in sharing information on this and recognize the importance of maintaining the strength across the industry on this important issue. But it is our opinion that the amount necessary to fund programs of this nature is far less than the assessment level proposed in the bill.

The third element I would like to highlight for you, and which represents a concern to us in opposition to this bill, is the diverse nature of the industry—which you have touched on already. This is indeed a unique industry. It is very much a regional industry. The States of California and Pennsylvania, represent 60 percent of the production of the United States. The problems of those regions are far far different than those of the other 26 States in which fresh mushroom producers exist.

I think it is also important to recognize contributing to the unique structure within this industry are the changes it has gone through during the last few years. We have five producers accounting for approximately 50 percent of the tonnage, and I might add, 50 percent of the funding, in comparison to the estimated 300 growers across the country.

In that respect, Camsco has been characterized during these hearings as a very large producer, nearly alone in being opposed to this bill. I think it needs to be understood that within the diversity of the industry, several small growers have contacted us. They are opposed to this bill. We believe many others are still unaware of this bill, but when they become aware of it, will share similar concerns about the very high mandatory assessment level from our experience, a level that most small growers would be unable to support nor afford.

Another point where we have some fundamental differences on the bill is that with five growers representing such a significant share in the industry, we would like to see a fairer or more even

playing field. While we respect the view of one grower and one vote, we are troubled by the fact that the proposed organizational makeup of the bill inadequately represents the five growers representing 50 percent of the funding for this program.

The final point that I would make is that we do share and believe that there needs to be cooperation within this industry as with any. We have been very proactive in sharing our resources and all the information we have on the food safety issue with members of the Mushroom Council and the industry at large. I think when an industry has such problems, it needs to cooperate; we certainly want to be very proactive in making that happen. But the proposed bill as it stands has significant inequities, funding concerns, and unanswered questions about how heavy assessments would be spent. We believe that we can compete very hard in the marketplace, but we also agree that we should cooperate on issues of mutual concern. Thank you, Mr. Chairman.

[The prepared statement of Mr. Leighton appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you, Mr. Leighton. Do you think a referendum would succeed in the next few months if this legislation passed, that the majority of the producers would support the referendum?

Mr. LEIGHTON. From my exposure to the situation at this point in time, I think we have to divide that into several issues. One is, I think among those who are aware of it and have certainly spoken here today. The Mushroom Council members certainly strongly supports this bill. However, I think there is a very large untapped grower base within the 300 growers of the United States who are largely small that are unaware of this bill or at best are unaware of the details contained in it, and when they are made aware of it, will have considerable concern for it.

Mr. HATCHER. You heard the testimony about maybe including a component regarding volume, have the growers who produced the majority of the volume approve it as well. I suppose that helps the bill in your estimation?

Mr. LEIGHTON. It does.

Mr. HATCHER. You heard the testimony of Mr. Shah Kazemi. You testified you are the largest. He testified he is the largest. You are both pretty big.

Mr. LEIGHTON. The industry is growing and changing very fast; we produce over 90 million pounds annually of which 70 million pounds are sold into the fresh market.

Mr. HATCHER. How could you have such different views about whether or not this would help promote the consumption of mushrooms and the safety issue?

Mr. LEIGHTON. I think on the safety issue, Mr. Chairman, we would probably agree that there is good common interest. I think the second major factor is in the regional structure of the industry and where our locations are and where his locations are. The majority of his business is on the west coast. The California market and the Pennsylvania market have considerably different market issues than we who only have but 2 of our 8 farms located in those regions. So I think the regional issue may be fundamental to our different views.

I think the other issue relates to the alleged marketing use of these funds. We have been very successful in the marketing of our product, in growing it over the last 10 years. I guess, fundamentally, we believe we can spend our marketing money better ourselves, along with investing in our various facilities and continuing to invest in new farms of which we built two in the last 3 years. And we choose to spend our money along those lines.

Mr. HATCHER. Well, I think this hearing is helpful, and of course it is not completed yet, but I hope that you and others who oppose the present legislation as introduced will continue to work with other producers who have different views to try to modify the legislation, if possible, to get a consensus. I think it is good that you all met yesterday. I hope you will continue to be involved in that process.

Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman. I was interested to note that all of Mr. Leighton's comments regarding the bill were to the bill as it stands and the proposal as it stands, and everyone knows we have not marked up the bill. We hope the industry will get together and iron out the differences so we can go forward. Do not think that the bill, as it stands, is the only option available. Your input to ongoing discussions on the subject would be most valuable and I would hope that the industry could resolve its differences.

Also, I am interested in your description of the mushroom industry as a regional one. I wonder what you mean by that. A lot of commodities are grown regionally, but that does not mean there is not the national demand or even an international demand for them. Would you expand on that a little bit? Is there an area of the country, for example, that is not supplied by mushrooms and one that could be potentially a consumer of mushrooms?

Mr. LEIGHTON. I think at the base of the issue of regionality is the fact that mushrooms basically do not travel well. They have a very short shelf life and are highly perishable, among the most perishable of all produce items available. That perishability requires that they be marketed generally within several hundred miles of where they are grown. Thus, when we look at the makeup of the industry and its historical underpinnings, 60 percent of that production is grown in Pennsylvania and California thus the marketing issues in these regions are far different than other areas of the country.

Therefore, while significant population resides in those areas, very strong regional orientations must be confronted concerning programs one would want to discuss in those particular markets. The balance of production—or 40 percent—is grown over 26 different States in the United States. It is most often the case that there is one grower for a particular region.

You have heard about the Georgia situation. It was pointed out that in New England it may be somewhat different. In our own case, there are farms located in the Midwest where there is far less concentration in the growing makeup of the industry. And the way one markets and develops those markets is different, given those unique regionalities to the product.

Mr. EMERSON. I do not see that there is anything very different about mushrooms in this regard than say limes which are also a perishable commodity. Even if 60 percent of production is in California and Pennsylvania, surely not 60 percent of the consumption is there.

Mr. LEIGHTON. It would be very difficult for you to ship mushrooms from Pennsylvania, meeting the quality requirements necessary beyond Pittsburgh and certainly very difficult to get a Chicago market. The issue between limes and mushrooms, and I am not presenting myself as a lime expert at this stage, but I would suspect comparing it to citrus overall is the high perishability of this product. It has a limited shelf life of 5 to 7 days under refrigeration, and if one goes into the stores, one can generally see the old age browning dark colored mushrooms. What we want to sell is white, clean mushrooms; they just bounce off the shelf.

Mr. EMERSON. But my reference is principally to the regionality of where it is grown. Do you not think that research and promotion could help all segments of the industry, your reservations about the bill notwithstanding, and help large producers as well as small producers?

Mr. LEIGHTON. I would divide those two things. I think in the research area, there is common ground in which there can be benefit; certainly, I would put food safety and the related technical issues of that in that camp.

In the area of promotion, I think it becomes the definition of the program and the effectiveness at the funding levels that is being developed, and a method by which one tackles this regionality that exists. As proposed and from the various discussions that have been presented, it is our opinion that that promotion element of it would not be cost effective at the proposed funding levels being discussed.

Mr. EMERSON. But the proposed funding levels being discussed are subject to negotiation?

Mr. LEIGHTON. Sure they are.

Mr. EMERSON. Thank you.

Mr. HATCHER. Mr. Grant.

Mr. GRANT. Thank you, Mr. Chairman. I will be brief. Mr. Leighton, can you envision a program like this that could work? You are not just adamantly opposed to this, are you?

Mr. LEIGHTON. No, I am not.

Mr. GRANT. You would at some time, assuming your objections could be addressed, support a program if it could be structured a little differently?

Mr. LEIGHTON. I tried to reflect a reasonable approach to this program and wish things could be worked out.

Mr. GRANT. So you are going to continue an ongoing discussions with the other people?

Mr. LEIGHTON. Certainly.

Mr. GRANT. Very good. Thank you, Mr. Chairman.

Mr. HATCHER. Thank you. We will recess for approximately 10 minutes while we vote.

[Recess taken.]

Mr. HATCHER. The hearing will resume. We are having votes in fairly short order and only 10-minute debates on these issues for a

vote. Given the fact that you gentlemen need to get on over to the White House and the fact that if you do not finish within the next 15 to 20 minutes, and given the fact that there does not seem to be much controversy, if you all can abbreviate it to the extent that you can, maybe we can get through in 15 to 20 minutes and will not have to leave you again before you are through.

I am going to call on Representative Richard Stallings from Idaho to introduce this panel.

Mr. STALLINGS. Thank you, Mr. Chairman. On this panel is a very very good friend of mine, Mike Cranney, president of the National Potato Council. He is from Oakley, Idaho, and has been a real leader in the development of this very very successful industry. Mike brings a lot of experience, a lot of firsthand knowledge of the way the industry operates. I think that it would be well advised to listen closely to what he has to say.

Also on this panel is Keith Masser from Pennsylvania, who is the vice president of the Government Affairs Council, and Mr. Donald Moschetti from Colorado. We are very fortunate to have these folks with us. They have given up a lot of time. This is a critical part of the growing season. For them to come back, I think, to tell us how important this issue is. And so, we appreciate your coming and look forward to your testimony.

Mr. HATCHER. Thank you. You may proceed.

STATEMENT OF MICHAEL CRANNEY, PRESIDENT, NATIONAL POTATO COUNCIL, ACCOMPANIED BY KEITH MASSER, VICE PRESIDENT, GOVERNMENT RELATIONS COMMITTEE, AND DONALD J. MOSCHETTI, GROWER-SHIPPER, CENTER, CO

Mr. CRANNEY. First off, I would like to explain, we have to apologize, Mr. Corey could not come in. We have Keith Masser here who is our vice president of governmental relations from Pennsylvania in his stead. So we would like to acknowledge that.

Mr. Chairman, we would like to thank you for the opportunity to come before your committee today. I am the president of the National Potato Council and appreciate the opportunity to appear before your subcommittee on behalf of the potato growers across the country. We have, as I have explained Mr. Masser with us, and also Don Moschetti who is a shipper-grower from the State of Colorado. We have submitted the full statement for the record and I will simply summarize it here.

Mr. Chairman, I am very familiar with the Potato Research and Promotion Act of 1971 and the contributions it has made to the potato industry in this country. One of the great accomplishments of the program is that it has drastically changed the consumers perception about potatoes. Consumers now generally regard potatoes as one of the best health foods that a person can eat. They no longer think that potatoes contribute to problems of obesity. But since 1971, as one might expect, there have been changes in the way potatoes are produced and marketed. It is these changes that prompt us to ask you to support our request to amend the 1971 law.

The 1971 law needs some changes so that the industry can continue its successful research and promotion program. Briefly, we

are requesting that the 1971 act be amended to accommodate two badly needed changes. One amendment to the act would give the potato board authority to assess potatoes that are imported into the United States. This change would make our program comparable to several other industry research and promotion programs, such as beef and pork. The reason here is straightforward. The market for imported potatoes is enhanced just as much as the market for domestically grown potatoes. Therefore, we think those who import potatoes in this country should pay their fair share of the program costs.

We want to emphasize that our authority to assess imported potatoes would not result in any discriminatory treatment. What we are proposing here would not violate our obligation under the General Agreement of Tariffs and Trade or the United States-Canada Free-Trade Agreement. Important tablestocks and seed potatoes would be assessed exactly as the domestically grown potatoes for these uses. For the processed products such as frozen fries and the assessment on imports would be calculated on a fresh equivalent basis. The USDA is expert in the development of these conversation ratios and we would use their data just as the beef and pork industries do.

Domestically frozen french fries would be assessed on a full fresh weight basis when they entered the processing plant. Thus, there would be no discrimination against the imported processed product. We would have no objection to having some importer representation on the board and to include them in any future referenda that might be held to determine whether the program should continue.

The second proposed amendment of the 1971 act would eliminate the refund provision of the current law. Again it is simply a question of equity. All those who benefit from the program should pay their fair share of the costs. The way it is now, a few large producers are refunding a disproportionate share of the total assessment collected. In other words, they are getting a free ride. The request of the amendment would correct that inequity.

Finally, Mr. Chairman, we are asking that these amendments be put in place without a referendum. Potato growers strongly support the current program and want these suggested changes. Twice in referenda, for other purposes, they voted overwhelmingly in favor of the industry-supported research and promotion program. We think it unnecessary to go the very large expense of conducting a referendum among more than 13,000 growers in the United States.

Mr. Chairman, that summarizes our request. I would be glad to answer any questions that you would have or that of your subcommittee. Thank you.

[The prepared statement of Mr. Cranney appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you, Mr. Cranney. Do you other gentlemen have statements as well?

Mr. MOSCHETTI. No, we do not have a prepared formal statement. We are here to answer your questions and enlighten any issues that we can.

Mr. HATCHER. I have not heard from any opposition to your two requests which seem to be reasonable to me. I did hear, of course,

some minor objection, technical objections, from the USDA this morning. Did you hear that testimony? And I would like for you to work with staff or maybe through Richard to try to see if we can give and take a little bit on any of that. The one most fundamental issue is that you do not want a referendum, to go through the procedure of a referendum, right?

Mr. CRANNEY. Yes, sir.

Mr. HATCHER. Do you think there is that much unity among potato producers that you really do not need to go through that procedure?

Mr. MOSCHETTI. I think supporting evidence for that is that at the present point of the 13,000 growers who were mentioned as producer potatoes in the United States, we now have full support of 95 percent of those producers. There are only 5 percent of the producers in the United States who do refund. As indicated they are in general large and gives us a disproportionate share of our money that is being refunded. But we do carry 95 percent.

Mr. HATCHER. All right. Do you have questions, Richard? I would urge you through your council or through your Congressman, Mr. Cranney, or yourselves to work with staff on this subcommittee to try to reconcile any technical difficulties or disagreement with the USDA, and I do not see any problem with moving your legislation in the foreseeable future. Thank you. Yes, sir?

Mr. MOSCHETTI. I just want to make one other point on the referendum issue. This bill does not change any of the present referendum issues that are in our present bill. We operate under one of the most stringent referendum criteria for termination of the act of the board of any of the other commodity groups, and therefore, none of that is being asked to be changed. So there would be protection continuing.

Mr. HATCHER. Thank you for being here and thank you for your testimony.

Our next witness is Mr. W. Donald Dresser, executive vice president, United Foods, Inc., Bells, Tennessee and sure enough his Congressman, Mr. Tanner, did get called away, but I do know he represents the area in which you live and produce mushrooms; is that correct?

Mr. DRESSER. No, sir. Congressman Tanner represents a district in west Tennessee that Congressman Ed Jones used to represent until he retired this year. United Foods is headquartered in that district in west Tennessee.

Mr. HATCHER. I see. I knew there was some connection. We will welcome you and look forward to your testimony. Your complete written statement will be made a part of the record, and you may proceed.

STATEMENT OF W. DONALD DRESSER, EXECUTIVE VICE PRESIDENT, UNITED FOODS, INC.

Mr. DRESSER. Thank you, Mr. Chairman. We appreciate the opportunity to be here today to testify in opposition to H.R. 2187. I have provided my testimony in written form and would like to summarize the views that we have in opposition to this bill.

First, United Foods has been engaged in the vegetable business for 50 years. We are very knowledgeable about the marketing and distribution of vegetables throughout the country. We have a nationwide brand that we promote. We have a long experience in many aspects of processing a great variety of vegetables. We do not do anything else in our company, except engage in the vegetable business.

In our view, Mr. Chairman, the proposed marketing order type program for mushrooms is not necessary. The mushroom industry has been growing very steadily. Our aspect of it has been very profitable at least. The mushrooms that we sell, we have no difficulty selling, and in our understanding of the industry, the sales of mushrooms are growing at least as fast as any other vegetable that we now process ourselves.

Our principal concern, however, with the bill as proposed is that the amount that it would assess the members of the industry, 2 cents a pound, is exceptionally high. This represents a very large fraction of the net income of most mushroom growers. It represents something around a quarter of our net income from our mushroom business.

We have reviewed the other marketing programs and have not found any that assess as much as this particular one. Two cents a pound represents more than 2 percent of the selling price of fresh mushrooms. All of the other marketing programs for research and promotion order programs assess amounts that when translated into mushrooms would be in the one-quarter to one-half cent range. The few exceptions that assess greater amounts are voluntary programs from which the assessed companies and assessed growers can seek and obtain refunds if they do not agree with the objectives of the program.

Our concern with the amount that would be assessed here is strengthened by the fact that there really is no universally understood program for which the moneys would be expended. The 2 cents per pound in our case comes to \$800,000 a year. That is a very large amount of money; we have no desire to pay that sum of money against an undefined program. Several things have been put forward over the past 2 years as possible uses for the funds. We have examined each of those with the exception possibly of a food safety research program, we are not in agreement with any of the proposed uses for the funds.

In particular, Mr. Chairman, we have decided after a fair amount of review, that the amount of money that would be available for any kind of consumer or trade promotion program would simply not be adequate to the job to do an effective program on a nationwide basis. At most, there would be funds available to spend against the regions where the mushroom growing is concentrated. United Foods is not engaged in growing mushrooms in either of those two regions.

One of our farms, Mr. Chairman, is in the Pacific Northwest. The difficulties that we face up there are imports from Canada, transportation distances that we need to haul a product to the various markets that we can serve from our farm there, and so forth. We do not have issues that can be addressed or solved through increased marketing expenditures in that region. Our other farms

are in southern California, where we enjoy good sales and have no particular need for a marketing program, and in Utah, where likewise we have no particular difficulty on the selling side.

We are willing to talk to other industry members about the possibility of establishing some sort of research program that would benefit the industry as a whole. We would have to, of course, be very careful about the selection of projects and personnel to work on those matters, and these are matters that we feel we are free to discuss with them. We would expect that a program funded somewhere in the one-quarter cent per pound range would be adequate to take care of those kinds of programs.

Now we have some special problems at United Foods that I would like to share with you, so that you understand that the industry is not all in exactly the same situation with respect to the proposed legislation. The three farms that we purchased, we purchased out of the bankruptcy auction 1½ years ago. The farms had suffered 5 years of neglect. The farms were in serious need of infusion of capital money for repair and renovation. Funds that are being sought with this particular order would seriously cut into the farms that we have available to complete the process of renovating those farms. We have been successful in repairing most of the problems that led to the bankruptcy, but there is still need for considerable additional capital funds.

In addition, we have our own research programs underway and we would prefer to spend the funds that are being sought here against our own research program, as opposed to a community one.

We also have a concern about the voting procedures that would be established pursuant to the proposed legislation. As you have been advised, there are five growers that represent more than 50 percent of mushroom production in the United States. Campbell Soup and United Foods are among those five.

The estimate that was given by one of the witnesses today was that there are maybe 365 growers in the United States. So if that is a correct estimate, then the five larger groups would have only 1 to 2 percent voting power under the proposed legislation. This kind of disparity does not exist in any of the other research and promotion order programs that have been adopted.

The particular concern with voting comes up with the procedure that is selected for a sunset clause or a termination of the program if it is determined not to work as it has been promised. As the voting procedures are currently established, it would require a petition by 30 percent of all growers by number in order to initiate a referendum. Thirty percent of growers by number could represent easily 95 percent of all mushrooms grown in the United States. Even if that 30 percent number were reduced to 10 percent, as the USDA recommends, that still could represent more than 80 percent of all mushrooms grown in the United States.

Mr. Chairman, we would recommend that the voting rights and the production somehow be linked together in order to provide a more equitable framework both for the referendum to consider the adoption of the program and to consider each successive referendum concerning the possible termination of the program. Likewise, we would recommend that due to the unique structure of the in-

dustry, the assessment rates and the voting rights be linked together in some fashion.

There are lots of areas for discussion and compromise as to how this could be done. We hope, Mr. Chairman, that you would suggest to the industry that discussion should take place along these lines.

We thank you for the opportunity to present our views and we welcome any questions.

[The prepared statement of Mr. Dresser appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you for your testimony. You heard the testimony earlier today that the proponents of this measure are willing to add a production component to the referendum of approval. I assume that you may have had something to do with getting that concession; is that correct?

Mr. DRESSER. I believe that was made in response to a proposal that we made, yes.

Mr. HATCHER. So you are on the right track in that particular anyway.

Mr. DRESSER. We are moving in the right direction.

Mr. HATCHER. I would urge you and others, especially you and Campbell representatives to continue to talk with the other producers. I do not know how many small producers out there might share the views that you and Campbell do. The gentleman from Campbell indicates that there are those, but I would suggest that from what has come to this subcommittee there is pretty general support, at least in numbers of growers throughout the country. And I would urge you to continue what you began yesterday, and that is, discussing ways that we might get a consensus that would be acceptable to the overwhelming majority of the growers.

Mr. DRESSER. Thank you.

Mr. HATCHER. Thank you very much for your testimony. There is one more vote, Dr. Beelman, I will be right back within 5 or 10 minutes to have your testimony.

[Recess taken.]

Mr. HATCHER. The hearing will reconvene. Our next and final witness is Dr. Robert Beelman, professor of Penn State University, University Park, Pennsylvania. We welcome you, doctor, and I know you are aware that your entire written testimony will be made a part of the record, and we would like you to proceed as you will.

STATEMENT OF ROBERT B. BEELMAN, PROFESSOR OF FOOD SCIENCE, COLLEGE OF AGRICULTURE, PENNSYLVANIA STATE UNIVERSITY

Mr. BEELMAN. Thank you, Mr. Chairman. I know time is of the essence, since I know a lot of people want to get off to lunch, so I will be brief. Future growth and vitality of any industry operating in a competitive marketplace is highly dependent upon basic research and development and the application of new technology. The U.S. mushroom industry is certainly no exception. With this in mind, I am pleased to provide testimony regarding the importance of university-based research to the future of our mushroom industry.

My background includes nearly 20 years of research experience with mushrooms at Penn State. However, the mushroom science has been a successful and respected program unique to Penn State as a land-grant university for 60 years, and currently involves numerous researchers from several academic departments within our College of Agriculture. Thus, I hope to describe the needed areas of future research perceived by our faculty and the challenges and rewards that could be garnered by an increased research emphasis occurring as a result of this proposed act.

Past research at Penn State has been extremely successful in helping mushroom farmers dramatically increase production yields. However, the current challenge is to improve fresh market quality and shelf life of the product within the context of high conservation efficiencies, intensive cropping systems, and the ever present need for a low per-unit cost of production. This will require research efforts to explore, understand, utilize, and transfer knowledge concerning the biology, physiology, genetics, and husbandry of the common mushroom, and perhaps some more exotic species with regard to quality. If enhanced funding for research were made available as a result of this legislation, areas of research that could be addressed or enhanced are the following.

I list five of these. I am not going to go into the details of these because it gets rather academic. But it would be the basic research regarding composition, safety issues as related to cultural practices; genetic enhancement; fruiting and its regulation, that is, controlling the production of the crop; and virus and disease control.

I believe the time would be best spent now, sir, if I would just answer any questions that might be forthcoming from the subcommittee.

[The prepared statement of Mr. Beelman appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you very much, doctor. How is the research, in the 20 years you have been involved, been funded?

Mr. BEELMAN. Well, at the university, we have always enjoyed good support from the industry. There is not a lot of support from the Federal Government regarding research on this crop. In fact, USDA has essentially dropped its research program with mushrooms. So really, there has been a collapse overall of research support for this crop. Even at the university, our program is not quite what it used to be in regard to numbers and in some ways its support. But most of the support has come via private industry and some through organizations, such as the American Mushroom Institute and some from suppliers who are interested in finding out how their materials might impact on the production and quality of mushrooms.

Mr. HATCHER. So you would see this legislation as perhaps important to continuing or expanding research of sort that you have been involved in?

Mr. BEELMAN. Yes. I think we really have a very minimal research effort in this country regarding this crop for the value that it has in comparison to other countries, for example, Holland, puts a lot of support toward research with mushrooms. And it has really paid off for them. Their industry has grown dramatically.

Mr. HATCHER. Is there any research conducted at other universities throughout the country?

Mr. BEELMAN. From time to time. There are obviously researchers that have specific expertise in certain areas that from time to time are capped and probably always will be. But there is really no other university that has any concerted effort, any ongoing effort with mushrooms that I am aware of, sir.

Mr. HATCHER. Do you come in contact with many growers in the course of your research? Do you have a feel for what is going on in the industry?

Mr. BEELMAN. Yes. All of our faculty are involved fairly closely with the growers. In fact, we have an annual meeting that is attended by 200 to 400 people. Usually almost every grower in the United States would be represented where we discuss our findings like today.

Mr. HATCHER. What kind of support do you think is out there for this legislation, for this kind of order?

Mr. BEELMAN. I really cannot tell you at the grower level about it. The only people I have had talk to me about it have all been favorable, but that is not a great sampling. So I really do not know.

Mr. HATCHER. Mr. Grant.

Mr. GRANT. Thank you, Mr. Chairman. Doctor, do you have any imminent breakthroughs on the front burner now or anything that is about to happen that you could tell us about? For a while we were researching—well, we actually developed the use of tobacco leaves as source of protein and other things like that. Is there anything that is esoteric or about to happen you could punch through with a little extra help?

Mr. BEELMAN. I cannot comment for all of the various areas of expertise within the university. But I would say that all of us have areas that have some real potential for making significant impacts at any given time in the research programs. Some of which are related to new ideas of improving the quality of the crop or the shelf life of the crop or can improve the efficiency of production.

Mr. GRANT. Maybe you can explain this sentence to me. "Organisms recognized as models for interactive ecological systems will be used to elucidate action modes of organisms closely related to the crop." What does that mean now?

Mr. BEELMAN. Would you read that again?

Mr. GRANT. "With the help of industry support to Penn State, organisms recognized as models for interactive ecological systems will be used to elucidate action modes of organisms closely related to the crop. The overriding objective for this research is to improve mushroom quality by identifying alternative management schemes for the crop." And I just wondered if there was something that was sort of about to happen, some breakthrough in the way we could manage the production or something like that?

Mr. BEELMAN. Well, I would say that comes within the area of production research which I am not as closely related to. My background is with post-harvest aspects, so I really cannot comment on that.

Mr. GRANT. Thank you, Mr. Chairman.

Mr. BEELMAN. I would say, if I had one other comment is that the other important thing about research—say university-based re-

search—whether it be Penn State or any other school, is that not only are there answers to questions that the industry needs made, but also people are being trained that are the future of the industry, which when research wings those people are not available and the industry suffers.

So research like this is investing in the future of the industry in two ways: Developing new ideas and also training people who are going to be the future leaders of the industry.

Mr. GRANT. One final thing. Do you believe there are certain carcinogens inherent in the mushroom that is harmful to humans?

Mr. BEELMAN. OK, you are raising the question. There is a compound—

Mr. GRANT. You are not the researcher that is doing that, are you?

Mr. BEELMAN. No; I have worked on that particular area. There is a compound found in mushrooms which has a common name of Agaritan which there was medical researcher out in Nebraska who thought that it was a carcinogen. It has been proven that it is not. But he now believes that it possibly could be a breakdown product or a precursor of it, and so that kind of work does continue and it is an area that does potentially threaten the industry on a day to day basis if some misinformation were to become public knowledge where people would be afraid of mushrooms again. I think it is important to continue to research in that area so that we know for sure that there is no problem there, as I believe is the case now actually.

Mr. GRANT. Thank you.

Mr. HATCHER. Thank you, Dr. Beelman. That concludes the hearing.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

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COMMITTEE ON
AGRICULTURE
COMMITTEE ON
SCIENCE, SPACE,
AND TECHNOLOGY
SELECT COMMITTEE
ON AGING

Congress of the United States

House of Representatives

Washington, DC 20515

July 25, 1989

HONORABLE RICHARD H. STALLINGS

before the

Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
Committee on Agriculture

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you to enlist your support to amend the Potato Research and Promotion Act of 1971. I -- along with 11 of my colleagues -- introduced legislation on May 4, 1989, to improve methods of assessments to fund a program of research, promotion, and consumer education for potatoes.

As you know, under the authority and provision of the Potato Research Act, the Secretary of Agriculture appoints potato producers from throughout the United States to serve on the Potato Board. The Board collects assessments on all potatoes used for human consumption and for seed. These assessments are used for the purpose of conducting research and promotional programs to expand markets for potatoes.

The 1971 Act has been extremely beneficial to potato growers across the country, as well as to consumers. However, modifications are needed to reflect the changes in the potato market since the program was first established.

First, current law authorizes assessments only on fresh potatoes produced in the United States. My bill, H.R. 2257, would authorize assessments on imported potatoes and potato products. It would assure equitable treatment for domestic producers, as well as foreign producers who export potatoes to the United States -- both of whom benefit from the generic promotional campaigns conducted by the Board. Similar legislation already has been passed for other commodities, including the beef and pork programs.

-2-

Second, H.R. 2257 would correct another inequity in present law -- any potato producer can request refunds from assessments. Approximately five percent of potato producers currently request refunds amounting to more than 15 percent of assessment monies. Again, all potato producers benefit directly or indirectly from the promotional activities of the Potato Board. Too many large producers request refunds and still benefit from the program without contributing to it. This legislation would direct the Secretary of Agriculture to make the needed changes without a producer referendum.

With nearly 95 percent of current potato producers supporting the promotional and research efforts of the Potato Board, it is evident that the industry already supports the assessment process. A producer referendum would be costly and only confirm the fact that support for the program already exists. This legislation would not change provisions of current law which allow the Secretary to monitor the Board's activities, to terminate the promotional plan if necessary, or to hold a referendum if requested by 10 percent of the growers.

These safeguards, similar to other commodity assessment programs, maintain accountability without necessitating a producer referendum in connection with this legislation. With these two modifications in the Potato Research and Promotion Act, the potato industry can more effectively meet research needs and promotional efforts.

Mr. Chairman, again I thank you for for this opportunity and I ask for your support -- and that of the other Subcommittee members -- for these proposed changes.

STATEMENT OF THE HONORABLE RICHARD T. SCHULZE
ON H.R. 2187, THE FRESH MUSHROOM PROMOTION, RESEARCH AND CONSUMER
INFORMATION ACT

BEFORE THE SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER RELATIONS
AND NUTRITION, OF THE HOUSE COMMITTEE ON AGRICULTURE

JULY 25, 1989

MR. CHAIRMAN, MR. EMERSON, MEMBERS OF THE SUBCOMMITTEE, THANK YOU. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS DISTINGUISHED PANEL AND TESTIFY ON BEHALF OF H.R. 2187, THE FRESH MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ACT. NEVER BEFORE HAVE I SEEN CHESTER COUNTY, PENNSYLVANIA, MUSHROOM GROWERS SO UNIFIED OR MOBILIZED BEHIND ANY ONE PROPOSAL.

THESE GROWERS, SOME OF WHOM I'VE KNOWN FOR OVER TWENTY-FIVE YEARS, RUN MAINLY SMALL- TO MEDIUM-SIZED, FAMILY-OWNED OPERATIONS, ARE HARD-WORKING, AND ENORMOUSLY PROUD. THEY HAVE DEALT WITH ADVERSITY IN THE FORM OF THE MASSIVE ONSLAUGHT OF DUMPED CHINESE MUSHROOMS WHICH ACCOMPANIED THE LATE 70'S TO EARLY 80'S AND, FORTUNATELY, SOME HAVE SURVIVED. NOW, AS EMBODIED IN THE LEGISLATION BEFORE US, H.R. 2187, THE FRESH MUSHROOM PROMOTION, RESEARCH AND EDUCATION ACT, THESE SAME GROWERS SEE, AS DO SOME OF YOUR CONSTITUENT GROWERS, A GREAT OPPORTUNITY TO DO MORE THAN JUST SURVIVE. TO THEM, THIS LEGISLATION REPRESENTS A CHANCE TO TELL MORE PEOPLE ABOUT THE VALUE OF WHAT THEY PRODUCE, TO ACHIEVE GREATER SUCCESS AND, IN SO DOING, KEEP THEIR PURSUIT OF THE AMERICAN DREAM ALIVE.

AND WHAT, AFTER ALL, ARE THESE GROWERS LOOKING FOR FROM CONGRESS? ARE THEY LOOKING TO BE BAILED OUT? -- NO! ARE THEY LOOKING TO BE EXEMPTED FROM THE FEDERAL INCOME TAX? -- NO! ARE THEY LOOKING FOR HUNDREDS OF MILLIONS OF DOLLARS IN SUBSIDIES? -- NO! WELL, THEN, WHAT DO THEY WANT? MR. CHAIRMAN, ALL THEY'RE ASKING OF US IS TO LET THEM DO WHAT WE DO EVERY TIME THE TWO BELLS SOUND -- VOTE IN A TRULY DEMOCRATIC FASHION!

THROUGH THE CONSENT OF A MAJORITY VOTE, THEY, AS A UNIFIED AND COHESIVE INDUSTRY, WANT TO DEVELOP PROJECTS TO PROVIDE INFORMATION ON THE NUTRITIONAL BENEFITS, THE PROPER SELECTION, STORAGE, HANDLING AND PREPARATION OF FRESH MUSHROOMS -- ALL OF WHICH WOULD BE OF SUBSTANTIAL BENEFIT TO THE CONSUMER. INDEED, IN AN ERA IN WHICH SHOPPERS ARE MISTAKENLY BECOMING CONVINCED THAT THEIR NEXT BITE OF A FRUIT OR VEGETABLE MAY BE THEIR LAST, REASSURING THEM ON THE FOOD SAFETY ASPECT OF PURCHASING FRESH PRODUCE IS NOT ONLY LAUDABLE, IT IS ESSENTIAL. AS SEPARATE ENTITIES, THE SMALLER GROWERS - THE TRUE FOUNDATION OF THIS INDUSTRY - HAVE NO VEHICLE FOR GETTING THIS INFORMATION OUT TO THE PUBLIC.

HOWEVER, UNITED WITH H.R. 2187'S LARGER SUPPORTERS, THEY CAN, BUT NEED PASSAGE OF THIS MEASURE TO, ACCOMPLISH GREAT THINGS. IN

-2-

THIS REGARD, I MUST ADD THAT THIS SUBCOMMITTEE'S WILLINGNESS TO HOLD SUCH A PROMPT HEARING SENDS A POSITIVE MESSAGE THAT WE, TOO, THINK SELF-DETERMINATION THROUGH MAJORITY-RULE IS A PRECIOUS COMMODITY.

UNFORTUNATELY, IT HAS COME TO MY ATTENTION THAT A SEVERELY LIMITED NUMBER OF SAVVY, CAPITOL HILL-WISE, CORPORATE POWERHOUSES VIEW STALLING THIS PROCESS AS PREFERABLE TO HELPING MOVE IT ALONG. THEY SAY THIS BILL IS AN ATTEMPT BY SOME MEMBERS OF THE FRESH MUSHROOM INDUSTRY TO LEVY A TAX ON OTHERS IN THE INDUSTRY TO ACHIEVE THEIR GOALS. THE FACT OF THE MATTER IS THAT EVERY PRODUCER, FROM THE SMALLEST TO THE LARGEST, WILL PAY THE SAME NOMINAL AMOUNT ON EACH UNIT OF PRODUCTION. THE ASSESSMENT IS SENSIBLY LINKED TO PRODUCTION -- THE MORE YOU PRODUCE, THE MORE YOU PAY, BUT ALSO THE MORE YOU STAND TO GAIN AND BENEFIT. FURTHER, H.R. 2187 IS DESIGNED TO GIVE ALL GROWERS, BIG AND SMALL, THE OPPORTUNITY TO COMPETE AS AN INDUSTRY FOR THE HIGHLY SOUGHT-AFTER GROCERY STORE SHELF SPACE, WITHOUT WHICH NO MUSHROOMS WOULD BE SOLD.

THESE SAME CORPORATE CRITICS ALSO COMPLAIN ABOUT THE SUBSTANTIAL "SACRIFICES" THEY WOULD HAVE TO MAKE TO PAY IN THEIR FAIR SHARE OF ASSESSMENTS TO THE NATIONAL MUSHROOM COUNCIL. SOMEHOW, AND DISTURBINGLY I MIGHT ADD, THIS IMPLIES THAT THE SMALL FAMILY-RUN FARMS WOULDN'T BE MAKING ANY SACRIFICES AT ALL IN ORDER TO MEET THEIR PAYMENTS. IN FACT, IT IS ALREADY THESE SAME GROWERS WHO, BY AGREEING TO PAY THE ASSESSMENT SO THAT THE WOULD-BE NATIONAL MUSHROOM COUNCIL MAY PURSUE GOALS FOR THE GOOD OF THE ENTIRE INDUSTRY, ARE MAKING THE GREATEST SACRIFICES. AND WHAT THESE FOLKS ARE GIVING UP DOESN'T COME OUT OF A CORPORATE BUDGET, IT COMES OFF THE KITCHEN TABLE, AND ONLY AS A RESULT OF THEIR OWN PERSONAL BLOOD, SWEAT AND TEARS! BUT THEY TRULY BELIEVE, AS DO I, THAT THEY'RE SACRIFICING IN THE SHORT TERM FOR SOMETHING A LITTLE BETTER FOR THEMSELVES DOWN THE ROAD. WE, IN CONGRESS, SHOULD REWARD, NOT INHIBIT, THAT SPIRIT.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AGAIN THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON BEHALF OF A PIECE OF LONG-OVERDUE LEGISLATION, IN THE FORM OF H.R. 2187. I AM HOPEFUL THAT YOUR DILIGENT EFFORTS TO MOVE THIS LEGISLATION WILL REMAIN ON TRACK, AND THAT YOU WILL STEADFASTLY RESIST THE EFFORTS OF A COUPLE OF CORPORATE OPPONENTS TO DERAIL THE PROCESS AT THE EXPENSE OF SCORES OF SMALL, FAMILY-OWNED FARMS. AS YOU KNOW, THESE FAMILY-OWNED OPERATIONS ARE AN ENDANGERED SPECIES AND, BY ENACTING THIS BILL AND WITHOUT EXPENDING A PENNY, CONGRESS CAN LET THEM KNOW THAT THEY DO HAVE SOMETHING WORTHWHILE TO SAY, AND THAT SOMEBODY IS OUT THERE TO HEAR IT!

THANK YOU!

Statement of Kenneth C. Clayton, Acting Administrator
Agricultural Marketing Service, United States Department of Agriculture
before the
Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition
House Committee on Agriculture,

July 25, 1989

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear before your Committee to present the Department's views on research and promotion proposals for mushrooms (H.R. 2187) and potatoes (H.R. 2257).

The Department has no objection to the enactment of these bills if amended to address the concerns outlined in the Department's reports to the Committee. Many of the changes recommended for consideration are designed to facilitate the administration and enforcement of these bills. We will be glad to work with committee staff to draft appropriate bill and report language to address our concerns.

Scope of Commodity Research and Promotion Programs

The Department currently oversees national commodity promotion and research programs for beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, and wool, lamb, and mohair. Authority exists for the floral and wheat industries as well, but programs are not currently in effect for those commodities. These national promotion programs, which focus on generic promotion and market development for their commodities, devote in excess of \$300 million a year to increase public and commercial awareness of their products. The Department has traditionally taken the position that we have no objection to industry self-help initiatives which are designed to help producers improve their position in the marketplace.

- 2 -

Legislative Guidelines for
Commodity Research and Promotion Programs

It is the Department's position that when research, promotion, and education programs are enacted by Congress, the long-run interests of the industry and general public are best served when such legislation contains the following features:

- national in scope representing the collective efforts of industry members nationwide;
- implemented through an upfront referendum by a majority of qualified persons voting;
- if implemented by delayed referendum, provision for refunds (either through direct monthly refunds or escrow) prior to issuance of the final order;
- opportunity for industry groups to reaffirm their support for these programs if requested by at least 10 percent of qualified persons;
- prompt refunds and confidentiality of refund information;
- appointment by the Secretary of board members from the industry;
- for programs that assess imports, provision for equitable treatment of domestic and imported commodities, importer representation on the boards and in referenda, and compliance with international trade agreements;
- prohibition on the use of assessment funds for false or misleading advertisement;
- prohibition on the use of assessment funds to influence legislation or governmental policy or action, except in recommending to the Secretary amendments to the order;
- direct enforcement authority by the Secretary, including the imposition of civil penalties and cease and desist authority;

- full reimbursement to the Department from date of petition for an order for costs incurred in administering the program, including startup costs, salaries of Department personnel, and the cost of conducting referenda;
- authority for the Secretary to suspend or terminate a program which the Secretary determines does not carry out the policy of the authorizing statute.

Full Reimbursement to the Department

Except for the pork and wheat programs, the Department has previously not been provided full reimbursement for costs incurred until after issuance of the final order. For newly authorized commodity research and promotion programs, the Department strongly urges the Committee to provide for full reimbursement of costs incurred by the Secretary in implementing and administering such programs, including costs for conduct of referenda. Although the Department has previously absorbed salary and other costs associated with the startup of these programs, the rapidly growing number of programs requires us to redirect staff resources from other critical program areas to handle the heavy volume of work associated with implementation.

The Department can no longer continue to absorb these startup costs. Moreover, these are industry self-help programs and such costs should be borne by the affected industries, not by the general public.

Departmental Oversight of Commodity Promotion and Research Activities

The Department plays an active role in the oversight of federally-sanctioned commodity promotion and research programs to assure that they are administered by the boards in accordance with the authorizing legislation and

the order. Annual budgets and workplans of the board are approved by the Secretary, and Department staff is in regular attendance at meetings of the boards. This ongoing and active oversight helps assure that industry-generated funds are expended for the purposes intended.

I will briefly discuss each of the proposals and address the Department's recommendations, beginning with the Mushroom proposal (H.R. 2187).

Fresh Mushroom Promotion, Research, and Consumer
Information Act (H.R. 2187) and Department Recommendations

H.R. 2187, if enacted, would enable domestic producers and importers of fresh mushrooms to develop, finance, and carry out a nationally-coordinated program for mushroom promotion, research, and consumer information. The program, which would be administered by a 9-member Mushroom Council, is expected to generate in excess of \$10 million per year based on a maximum assessment rate of \$.02 per pound of fresh mushrooms, as specified in the bill. The bill contains a provision for an upfront referendum, with such referendum to be conducted no later than 60 days prior to the effective date of the order. Approval of the order would require a simple majority of those producers and importers voting. No provision is included for assessment refunds under H.R. 2187.

H.R. 2187 also authorizes the Secretary to deal directly with violators of the Act by assessing civil penalties of not more than \$1,000 per violation.

The Department urges the Committee to give full consideration to our recommendations to provide (1) full reimbursement to the Department for all startup costs (estimated to be \$45,000 to \$50,000) incurred prior to the issuance of the order; (2) for a 60-day period for publication of the proposed order (rather than 30), and 180-day period (rather than 120) to give the

Secretary sufficient time to review any comments received on a proposed order and conduct a referendum, (3) for an expansion of the prohibition against certain uses of assessment funds to include a specific prohibition against the use of such funds to influence legislation; and (4) direct enforcement authority to the Secretary, including cease and desist authority.

Enactment of H.R. 2187, if amended, would result in reimbursement to the Department of \$45,000 to \$50,000 for all startup costs, including the conduct of the initial referendum. After the order is issued, ongoing administrative costs are expected to reach \$40,000 to \$50,000 annually.

Potato Research and Promotion Act Amendments
(H.R. 2257) and Department Recommendations

H.R. 2257, if enacted, would amend the Potato Research and Promotion Act to: (1) eliminate the refund provision; (2) provide for assessments on imported tablestock, frozen, processed or seed potatoes; (3) provide for importer representation on the board; (4) extend coverage of the Act to the States of Alaska and Hawaii, and (5) extend comparable reporting and recordkeeping requirements to importers as is currently required of domestic handlers. The bill further provides that any amendment to the plan issued under the amended Act would become effective on the date the Secretary of Agriculture issues the amendment, without being subject to a referendum.

The Department strongly believes that major amendments to existing programs, such as proposed by H.R. 2257 for elimination of refunds and assessment of imports, should be subject to an upfront referendum. In the alternative, a delayed referendum which allows for refunds of assessments prior to the referendum is acceptable.

Precedent has been established in the beef and pork programs to assess imports of such commodities or the equivalent thereof contained in imported products. H.R. 2257 provides for assessments on imported tablestock, frozen, processed or seed potatoes. Under the currently authorized potato research and promotion program, assessments on potatoes harvested in the United States are imposed only on potatoes for food uses and seed potatoes. The Administration urges modification of the categories of imported potatoes which would be assessed to assure the same coverage for imports as for domestic products. Discriminatory treatment of imported potato products would violate our obligations under the General Agreement on Tariffs and Trade and the U.S.-Canada Free Trade Agreement.

If provision is included to assess imports of potatoes and potato products, the bill should be further modified to permit importers and domestic producers to participate in a referendum on the amended plan, as well as any future amendments to the plan. The bill should also be amended to provide that any amendments to the plan should become effective no earlier than 60 days after issuance.

If enacted, the revised program would be expected to generate annual revenue of about \$5.9 million compared to the new assessment level of \$4.6 million under the current program. Estimated costs to be reimbursed to the Department for conduct of the referendum is \$20,000.

Mr. Chairman, this concludes my statement. My associates and I will be glad to respond to any questions the Committee may have.

STATEMENT OF JAMES CIARROCCHI
PRESIDENT, AMERICAN MUSHROOM INSTITUTE
BEFORE THE
HOUSE AGRICULTURE SUBCOMMITTEE ON
DOMESTIC MARKETING, CONSUMER RELATIONS AND NUTRITION
JULY 25, 1989

Good morning, Mr. Chairman, members of the Subcommittee. I am James Ciarrocchi, President of the American Mushroom Institute, and I appreciate the opportunity to testify in support of the Fresh Mushroom Promotion, Research and Consumer Information Act, H.R. 2187.

The American Mushroom Institute, founded in 1955, is a non-profit, national trade association located in Kennett Square, Pennsylvania. As our bylaws state, the purposes of AMI are to "increase cultivated mushroom consumption through promotion; help develop economical methods of growing and marketing mushrooms; collect and disseminate valuable information to members; and to aid members with any problem."

The American Mushroom Institute's (AMI) major source of income is from dues paid by 106 grower and 165 associate members. We do not receive any financial assistance from local, state or federal government sources.

We provide many services to our members - the Mushroom News is published monthly; we seek state and federal support for mushroom research projects; work with the U.S.D.A., Pennsylvania State University, and other universities on various research projects; provide national and international conferences for mushroom growers; maintain a library of resource information of interest to our members; sponsor seminars and workshops; maintain membership in the International Society of Mushroom Sciences, the Produce Marketing Association, and the United Fresh Fruit and Vegetable Association; maintain an active government relations program; support and cooperate with the Canadian Mushroom Growers Association; provide a very active insurance program; and other direct services for our members.

In order to provide the Subcommittee with a better understanding of the mushroom industry, I will briefly discuss some of our history, as well as the current make-up of the mushroom industry.

In 1955, the per capita consumption of fresh and processed mushrooms in the United States was six ounces. In 1988, per capita consumption was 3.6 lbs.

Despite such an increase, per capita consumption in the U.S. is still far below that of other countries. For example, Canada's per capita consumption is 5.7 lbs., the United Kingdom is 7.9 lbs., Holland is 8.2 lbs., and Belgium is 7.5 lbs. Marketing and distribution in these countries and many others has been enhanced by government subsidized programs with mandatory grower participation.

When the AMI was founded in 1955 there were more than 700 growing operations in the United States. In 1988, only 356 growers remained. This represents a 50 percent loss in growing operations since 1955.

As the figures indicate, production has increased while the number of producers has dramatically decreased. The consolidation of our industry has resulted in a loss of many who played an important part in the development and growth of the U.S. mushroom industry.

We believe this legislation will help unify our industry so that we may collectively identify and address the challenges of the future. By pulling together and organizing the resources that we have as an industry, we can accomplish much more than could otherwise be achieved through singular attempts by individual companies. In short, our collective voice will be louder and more effective than our solitary voices.

The fact that growers will have administrative and decision-making duties under this legislation will allow mushroom producers to formulate programs to respond to a variety of changing forces in the competitive world of food marketing. The proposed Mushroom Council, to be appointed by the U.S. Secretary of Agriculture, will represent a cross section of the entire industry, and specific concerns of each will be addressed. We are confident that such a forum will be of the utmost benefit to this industry.

Another factor that has influenced the mushroom industry over the years was the decimation of the processed mushroom industry by imports in the last decade (a fact confirmed by several federal analyses by the International Trade Commission). The near destruction of the domestic processed mushroom industry, loss of hundreds of American jobs, and the resulting business failure of scores of domestic growers are permanent reminders of the sudden economic turmoil which imports can create. This is one reason why we support the inclusion of import assessments in this measure.

The domestic cultivated mushroom industry survived the onslaught of imports through a dramatic and painful transition to growing for the fresh markets. As documented by the USDA's crop reports, the domestic mushroom industry's production has reversed

from 25% fresh/75% processed in the late '60s to 74% fresh/26% processed today.

While imported fresh mushrooms are not currently at levels which would trigger assessment, we certainly feel this provision is necessary to provide the industry with stability and equitable treatment as concerns imported products, particularly in light of recent trade liberalization activities.

Of course, importers will receive the same treatment as the domestic industry, such as the 500,000 pound exemption and representation on the Mushroom Council.

Another component of the bill that we feel is very important is mandatory participation.

The domestic cultivated fresh mushroom industry has embarked on several voluntary promotion campaigns over the years. AMI, itself, has attracted state matching funds for several efforts. For AMI, a lesson from every one of these promotion efforts has been the unreliability, inefficiency and inequities of voluntary participation. The fresh cultivated mushroom industry will benefit as a whole from a successful promotion campaign, thus the cost to the industry should also be borne as a whole.

In addition, a prohibition on the use of assessment funds for lobbying activities, as suggested by USDA, is supported by AMI. As I mentioned earlier, one of the services provided to AMI members is our government relations program, thus it is not our intent to have additional funds expended by the Mushroom Promotion and Research Board on government relations activities.

AMI, in the process of serving the mushroom industry for over 30 years, has witnessed many changes. While we recognize this is a fluid industry, we also realize there are ways to stay competitive, to grow and to prosper. We will be better equipped to plan for, develop, and sustain a strong industry in the years to come if we are able to utilize the benefits of a research and promotion program.

The greater the opportunity for individuals involved in an industry to be actively involved in directing its course, the greater the chances for success. While there will always be business cycles, supply and demand, etc., the good news is there are proven ways to let consumers know about our quality product and to anticipate and favorably respond to consumers' needs and desires.

We believe every sector of our industry will benefit from a nationally coordinated research and promotion program. The Board of Directors of the American Mushroom Institute has endorsed the concepts of H.R. 2187, and we are hopeful that Congress will allow the fresh mushroom growers the opportunity to establish a research and promotion program of their own.

STATEMENT OF DENNIS ZENSEN
CHAIRMAN, MUSHROOM COUNCIL
Before the House Agriculture Committee
Subcommittee on Domestic Marketing, Consumer Relations & Nutrition
July 25, 1989

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to speak on behalf of H.R. 2187, the Fresh Mushroom Promotion, Research and Consumer Information Act.

I am Dennis Zensen of Sylvan Foods which has mushroom farms in Florida and Pennsylvania. Today I am speaking as Chairman of the Mushroom Council on behalf of what we believe is in the best interest of the mushroom industry.

Over two years ago, a group of individuals who work in the mushroom industry came together to discuss its future. Present were large and small growers -- members of the industry trade association and representatives of the larger companies -- truly a broad, cross section of the industry. Our subsequent discussions and research led us to the conclusion that the fresh mushroom industry overall could best be served by a national, federally sanctioned promotion, research and consumer information program. At that time, the Mushroom Council was formed to pursue this goal.

We developed a proposal that is embodied in the legislation you are considering today, which would allow mushroom growers to decide whether they would like to develop, finance and operate a nationally coordinated program for fresh mushroom promotion, research and consumer information.

Throughout this entire process, we have made repeated efforts to reach out to include all individuals and companies in this industry, and continue to do so in order to gain even broader support.

H.R. 2187 would provide for a fresh mushroom order to be issued by the Secretary of Agriculture, but before the order could go into effect -- before any assessments are collected -- it would have to be approved by a majority of eligible mushroom growers.

The rate of assessment would be one half of one cent per pound for the first year and one cent per pound in the second year. The maximum assessment in any following year would be limited to two cents per pound. Based on USDA statistics, this would generate approximately \$2 million the first year and approximately \$4 million in the second year.

The legislation would assess imports as well, but growers or importers of 500,000 pounds or less of mushrooms would be exempt. This may seem like a large amount, but the industry recognizes 500,000 pounds of production as coming from "small producers."

- 2 -

Mr. Chairman, we recognize the interest that many legislators share with their constituents in exploring alternative crops. Diversification may well insure the survival of many currently involved in agriculture. And as we have witnessed, there is a great deal of interest in small, experimental type mushroom farms, primarily for exotic types of mushrooms. We certainly would not want to place a burden on those producers who are just starting out in this business. But I would add that the benefits of the program would accrue to them as well.

The promotion and research program would be administered by a Mushroom Council, made up of mushroom growers nominated by the industry and appointed by the Secretary of Agriculture. As with other programs, this is truly a self-help effort . . . producer-financed and producer-operated. It gives mushroom growers the opportunity to have a role in the successful marketing of their product after it leaves the farm.

This industry does not receive any federal benefits, such as price supports or a federal marketing order. The implementation of a fresh mushroom promotion and research program would be at no cost to the federal government.

Mr. Chairman, let me outline the reasons why we believe this legislation is needed. In simple terms, this industry faces many current and future challenges. We have the opportunity, through the program that could result from the passage of this legislation and a successful referendum, to address them on an industry-wide, collective and cooperative manner.

These challenges include:

- Competition for shelf space and the consumer's food dollar. In order to successfully compete with other fruits and vegetables, a higher industry profile is needed. Only a few years ago, there were less than 100 produce items, now there are over 200. This fact alone means a greater effort to distinguish our product is needed to stay competitive.
 - Food safety issues. American consumers, now, more than ever, demand complete and accurate information about the food they eat. Under this legislation, projects could be developed to provide information on the nutritional benefits, the proper selection, storage, handling and preparation of fresh mushrooms -- all of which would be of tremendous benefit to the consumer.
- The program established under this legislation could provide an excellent vehicle for coordinating, conducting and disseminating research on an industry-wide basis to benefit growers and consumers. In addition the program could serve as a clearinghouse of information and research results to the public.
- Educational efforts. Efforts can be undertaken to provide a more accurate profile of our product -- its wholesomeness and

positive nutritional value. In order to increase the perceived value of mushrooms, we need to make retailers as well as consumers aware of their good nutritive value, versatility and value added benefits.

-- Grower returns. Production and consumption are growing, but at an erratic rate. Retail prices have increased along with consumption, but producer prices have been on a steady downward trend. This is not an uncommon phenomenon in a commodity business and is often an indication of a highly fragmented and disorganized situation at the producer level.

-- Consolidation of industry. Large, corporate entities have come and gone from this industry. Smaller growers are the backbone of the industry and are largely responsible for the innovations that have strengthened it.

Mr. Chairman, the items I have just highlighted are not the concern of just one single company, brand or grower. How we as an industry respond will affect everyone who grows mushrooms. This leads us to questions about how the money will be spent. The legislation is written to ensure that they money will be used in efforts for fresh mushroom promotion, research and consumer information. How this will be accomplished is left to the growers nominated by the industry and selected to serve as the administrative body. It would clearly be presumptuous of me to say what the funds would be spent on because that would be the decision of the Council in response to conditions facing the industry at that time.

Many of these challenges to the industry represent a real opportunity for growth. I would like to clearly state that we have no desire to pursue any supply management efforts. The goals of this legislation and the program are focused solely on the demand side of the equation.

We have numerous letters of support from our customers in the retail and food service business. I would like to provide a list of these for the record, along with a copy of a letter from the Produce Marketing Association which unanimously endorsed this legislation.

We are asking Congress to give mushroom growers the opportunity to choose if they want a cost-efficient and effective way, on an industry-wide basis, to participate and share the benefits of a program that can lead us successfully into the 1990s.

Mr. Chairman, we will be happy to work with this Committee, the Department of Agriculture, and others in the industry to make modifications that may be necessary to strengthen the legislation; but ask that the Committee move expeditiously in its consideration. Thank you.

(Attachments follow:)



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Karen Stout
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Robert Thurber
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Wade Whitfield
Kroger Co.

June 16, 1989

Mr. Dennis Zensen
Chairman
Mushroom Council
Route 5, Box 245
Quincy, FL 32351

Dear Mr. Zensen:

The Produce Marketing Association is a national association of 2500 firms and individuals that produce and distribute fresh fruits, vegetables and floral products to the nation's consumers. At the most recent meeting of the Board of Directors of the Produce Marketing Association on May 13, 1989, a resolution was passed in support of H.R. 2187 and S. 918 -- proposed legislation that would establish a fresh mushroom promotion, research and consumer education order.

For nearly forty years, this association has witnessed the benefits that both state and national research and promotion programs have provided to producers and consumers. The information offered by these programs on nutritional benefits as well as on proper selection, storage, handling and preparation is a very important service for all consumers.

We commend the fresh mushroom industry for taking the initiative to improve the marketing of fresh mushrooms. With so much misinformation appearing in various media forms, consumers need accurate, truthful information about the fresh produce items they purchase. The research commitment of the order and the application of those results will enable consumers to make intelligent buying decisions based on fact rather than emotion.

Sincerely,

Robert L. Carey, CAE
Executive Vice President

FRESH MUSHROOM PROMOTION ACT SUPPORTERS

Robert C. Thurber
Director of Purchasing
Perishables
Sysco Corporation
Houston, TX

Mr. Edwin C. (Bud) Godwin
V.P. Director Produce
Operations
Tom Thumb-Page
Dallas, TX

A. P. Misasi
Corporate Vice President
Produce Department
The Grand Union Company
Wayne, N.J.

Mr. Chuck Tryon
Director of Perishables
Super Valu Stores, Inc.
Minneapolis, MN

Mr. Ed Odron
Vice President
Produce Marketing
LUCKY
Northern California Division
San Leandro, CA

Mr. Richard Dachman
National Marketing
Procurement Manager
KRAFT, Inc.
Deerfield, IL

Mr. Dick Spezzano
The Vons Companies, Inc.
Vice President, Produce
Los Angeles, CA

Mr. James C. Ratliff
Corporate Director of
Procurement
Hilton Hotels Corporation
Beverly Hills, CA

Mr. Ray F. Klocke
Vice President Sales, N.A.
Chiquita Brands, Inc.
Cincinnati, OH

Mr. George J. Michalak
Vice President
Perishables
Weis Markets, Inc.
Sunbury, PA

STATEMENT OF SHAH KAZEMI
PRESIDENT, MONTEREY MUSHROOMS, INC.
BEFORE THE
HOUSE AGRICULTURE SUBCOMMITTEE ON
DOMESTIC MARKETING, CONSUMER RELATIONS AND NUTRITION
JULY 25, 1989

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to testify in support of H.R. 2187, the Fresh Mushroom Promotion, Research and Consumer Education Act.

Mr. Chairman, I am the President of Monterey Mushrooms, headquartered in Santa Cruz, California. Monterey is the largest national marketer of fresh mushrooms with approximately 74 million pounds of fresh market sales annually. We market our product under the First Harvest label.

In addition to the Santa Cruz office, the company is comprised of five fresh mushroom growing facilities with two in Watsonville, California; and the remaining in Morgan Hill, California; Madisonville, Texas; and Loudon, Tennessee. Mushroom processing facilities are located in Bonne Terre, Missouri; and Santa Cruz and Santa Maria, California. Our supply operations are located in San Juan Bautista and Santa Cruz in California; Madisonville, Texas; Avondale, Pennsylvania; and New Albany, Indiana. We employ approximately 2,000 people and have yearly revenues of over \$125 million.

As a large marketer, my company has the most to benefit or lose from the situation Dennis has outlined.

We spend an enormous amount of money on promotion, marketing, consumer education and research. Yet we recognize the benefits provided by this legislation and the fact that programs established would complement our ongoing activities. We are very proud of the product we grow. Each of us today would tell you we grow the best mushrooms, but all of us have to be concerned about the overall image of our product and our industry.

As President of Monterey Mushrooms, I have the ability to coordinate the five farms we have, our packaging and processing, our marketing, and our sales force. We are a successful, profitable business because each component of the company works together. This is exactly what I believe the promotion program can do for mushroom growers on an industry-wide basis. On those

areas of mutual concern, we can cooperate in unity. And past that point, we can compete in a free-market atmosphere.

Mr. Chairman, I will be paying my proportionate share and as much as any company of my size. I would like to note, however, that mushrooms are my company's only business interest. We are not a huge, diversified company with a host of different business interests that add to our bottom line. While mushrooms may be only a small part of some companies' total operations, for most of us, mushrooms are our entire business. The future of the mushroom industry is the key to our prosperity and profitability; therefore, we are much more dependent upon and committed to its future success.

I personally feel there is a great need to invest in the future of the mushroom industry. Seed money now will help ensure a strong industry tomorrow, one that can sustain itself and prosper by addressing ever-changing industry concerns. Problems such as food safety, the need to maintain the availability of chemicals that we must have for mushroom production, and the need to improve the public awareness of the nutritional benefits of our product are but several concerns which we must address if we are to stay competitive.

We in the mushroom business have an outstanding product that is attractive to consumers. We have the good fortune of being in a growth industry. However, the food industry is very competitive. The corporate food company giants spend billions for new product development and promotion. Many small to medium-sized producers cannot afford the research and development and promotional costs on their own. What they can do, however, is join with other producers to advance our product together, so that the cost is sufficiently spread out and not unduly borne by any one company.

Because it is not in the interest of one company to provide the resources and programs needed by the entire industry, we are asking Congress to give the mushroom producer the same kind of self-help legislation that has already been given to producers of other agricultural commodities.

Thank you.

Testimony of Kirk W. Leighton
President - Camsco Produce Company
Before the House Committee on Agriculture Subcommittee on Domestic Marketing,
Consumer Relations and Nutrition
25 July 1989 Hearings on Commodity Promotion and Research

Mr. Chairman and Members of the Subcommittee, we very much appreciate the opportunity to testify concerning H.R. 2187, legislation which would authorize a Mushroom Marketing Order.

Camsco Produce Company is a subsidiary of Campbell Soup Company. While Campbell has a rather long history of growing mushrooms for use as ingredient in our canned products, we entered into the fresh mushroom business only ten years ago. Camsco's involvement in fresh mushrooms came as the Company sensed the growing consumer interest in this product. That interest is evidenced by the fact that fresh mushroom sales have doubled over the past decade from 230 million to 469 million pounds in 1988. In our own case, we have expanded our annual fresh market sales from 0 to 70 million pounds during the past ten years. We believe Camsco is currently the largest U.S. grower of fresh mushrooms, with an estimated 15% share of the fresh market.

We wish we could be testifying today in favor of this legislation. However, we are unable to do so. We oppose this bill for several reasons including lack of need for the legislation, its undefined programs, the high level of funding and the inequitable voting and assessment method.

We would point out to the Subcommittee that the legislation is not the product of a united mushroom industry. Indeed, its opponents include the first and fourth largest mushroom growers, who never even saw the bill until the time of its introduction. We are aware that some smaller growers also oppose the bill and believe that others will join their ranks when they are made aware of it and they weigh the significant costs of the mandatory assessment against the uncertain benefits of the program which their money would fund. The order would assess \$.01 per pound during the second year. This would raise approximately \$4.0 million. The law would allow this to rise to as much as \$.02 per pound.

We have been unable to find a clear, much less a convincing, description of the program on which the funds collected would be spent. Much of the promotional material for the order has talk of marketing programs like those for beef and pork. However, these funds would not be sufficient for such media oriented programs aimed at consumers. There has also been talk of retailer-oriented marketing. Our experience is that without also advertising/promotion to the consumer, this retailer support is not cost effective.

Proponents of the program have circulated information alleging the great success of the California Strawberry Marketing Order. They point out that strawberry production grew by 18% and crop value 23% from 1984 to 1988. They fail to point out however, that the fresh strawberry crop value has flattened in the past three years. Fresh strawberry sales growth (16% between 1984 and 1988), even with the benefits of its marketing order, has not grown as fast as that of fresh mushrooms, which grew by 21% over the same period. We fear that the desire for this order is being driven by advertising people who benefit no matter what the results.

Even if such a program is effective, there is normally a several year lag between when the money is spent and when the benefits accrue. We fear that many advocates of this bill have not been warned that their funds will at best not achieve results for several years after their expenditure.

If a marketing program is envisioned, the bill does not address the unique regional nature of mushroom growing in this country. Mushrooms have a shorter shelf-life than many other produce items. This means that mushroom growers must be located within several hundred miles of their markets. The result has been a group of regional mushroom markets rather than one national market. The largest of these markets centers in Pennsylvania where 45% of U.S. mushrooms are grown. Another market is in California, with 15% of U.S. mushroom production. The situation facing growers in these areas is quite different than in other parts of the country where a single grower is, more often than not, the only producer within hundreds of miles.

The bill itself makes no attempt to deal with these very significant differences. We cannot conceive of a marketing program which would equitably benefit mushroom growers in these different circumstances. The make-up of the Council would doubtless be skewed towards the regions of heavy mushroom concentration with the predictable result that growers from other regions would be compelled to subsidize marketing activities in these concentrated regions.

If a marketing program is not envisioned, then the amounts which would be collected are far greater than necessary for other industry objectives. Whatever the case, we are being asked to simply support collection of funds which someone will decide to spend somehow. At Camsco we feel we have much better uses for those funds, which we would direct into the continued improvement of fresh mushroom quality and efficiency of production.

The doubling of fresh mushroom sales over the last decade further raises the question of why a marketing order is even necessary. Certainly this situation is far different than the declines and distressed conditions which generated legislation establishing promotion programs of products such as pork, beef, and many other commodities the Subcommittee has reviewed.

The bill establishes an inequitable method of voting and assessing. It would allow a simple majority of growers (who could pay a small minority of the assessments) to impose an assessment which would rise rapidly to at least \$.01 and as high as \$.02 per pound of mushrooms. This would cost our Company \$750,000 annually at the \$.01 level and \$1.5 million at the \$.02 level. All this, I would point out again, would go to an undefined program. We are being asked to buy a "pig in a poke". We would much rather spend that money in building new facilities like the ones we have established in Dublin, Georgia and Hillsboro, Texas. These two new farms and each of our other six farms have provided substantially increased employment and purchases of goods and services in their communities over the past eight years.

And, to make matters worse, the method of terminating the marketing order is even less fair, requiring votes by two-thirds of the growers to end the program.

Growers such as Camsco who are currently investing heavily in marketing, research and quality enhancement would be forced under this bill to pay not only for their own efforts, but also for those of the entire industry. At the risk of sounding redundant we are convinced that we can spend this money better.

-3-

Consumers ultimately will pay higher prices because of this order. In many regions, the challenge is not creating demand for high quality mushrooms. Instead the challenge is consistently producing those mushrooms. This program would simply add an additional cost to those producers who are already working at full speed to try and keep up with that demand. It would divert funds which could be used otherwise for quality improvement and expansion of technical and facility enhancements.

Mr. Chairman, we recognize that there is indeed a need for greater cooperation within the mushroom industry. Our firm has been very pro-active in advancing information on food safety concerns and related issues. Introduction of this measure has resulted in meetings and conversations which could further efforts within the industry to unite on the problems that face us. We urge that the Subcommittee not move forward on mushroom marketing order legislation until consensus can be achieved within the industry and the legislation is amended to reflect that consensus. We pledge our best efforts to help achieve that consensus and hope that others who have supported this bill will see the long term benefits of an industry which competes hard in the marketplace but also cooperates on issues of mutual concern to us all.

Thank you again for the opportunity to present these views.

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BEFORE THE SUBCOMMITTEE ON
DOMESTIC MARKETING, CONSUMER RELATIONS AND NUTRITION
OF THE HOUSE COMMITTEE ON AGRICULTURE

HEARINGS ON LEGISLATION TO AMEND THE POTATO
RESEARCH AND PROMOTION ACT OF 1971

STATEMENT BY MICHAEL CRANNEY

Mr. Chairman, my name is Michael Cranney. I am a grower from the State of Idaho. I am accompanied today by Keith Masser, who is a grower from Pennsylvania and Vice President for Government Relations for the National Potato Council and by Don Moschetti, who is a grower-shipper from the State of Colorado.

We are appearing today before your subcommittee on behalf of members of the National Potato Council. The Council represents over 13,000 potato growers located in 38 states.

We request your consideration and support of legislation that would provide the National Potato Promotion Board (Board) with improved methods of collecting assessments to conduct promotion and marketing research and provide consumer education about the use of potatoes.

We are extremely proud of what we have accomplished since the Act was passed in 1971. We think we have added significantly to the economic well-being of potato producers in this country. We are especially pleased with our promotion programs which have drastically changed consumers perception about the nutritional qualities of potatoes. Once people thought of potatoes as a food that added to the problems of obesity. Now, consumers are generally aware of the fact that potatoes are one of the best health foods that a person can eat.

But with our tremendous success over the years there have also been significant changes in both production and marketing of potatoes. It is these changes that prompt us to be here today to request some changes in the 1971 law. Let me elaborate.

The present statute authorizes assessments only on potatoes produced in the United States. The proposed legislation would authorize assessments on imported potatoes. It would assure that equitable treatment is afforded domestic potato producers and foreign producers who export potatoes to the United States. The advertising and consumer information programs carried out the Board since 1971 have been strictly generic in nature.

That is, there have been no specific references to any particular brand of potatoes, nor has there been any effort to

distinguish between potatoes produced in the United States for human consumption and potatoes that are imported. We would continue this equal treatment in our promotional programs.

The need therefore for the Board to have authority to assess imported potatoes is clear. The extent to which the market is enhanced, through the Board's activities, for potatoes produced in the United States, that same market enhancement is afforded imported potatoes. But, even though the market is enhanced for the imported product, foreign producers are not paying their share of the costs associated with the Board's research and education program. The proposed legislation would correct that inequity.

Present legislation provides for refunds on assessments. That is, if a potato producer wishes not to participate in the research and education program carried out by the Board, then that producer can petition the Board and request a refund of the assessments levied on the producers' potatoes sold in commercial channels.

The current refund provision results in a situation where about five percent of growers refund about fifteen percent of total assessments collected. Too many large producers are getting a "free ride" on the program. Again, potato producers, as an industry group, view this result as inequitable.

Only part of the producers are paying the assessment, but, all producers are benefiting from the market expansion activities of the Board. The proposed legislation would correct that inequity. The current activities of the Board, authorized by the Act, were instituted after a referendum among potato producers. That initial referendum showed overwhelming support among potato producers for the market expansion program. A subsequent referendum among growers conducted in 1984 to determine whether the maximum allowable assessment rate should be raised again showed extensive support for the program. Given that record of support among producers for the program and considering the substantial costs and time associated with the conduct of a referendum among the 13,000 producers, the Council is proposing that the changes associated with the proposed legislation be made without another producer referendum. Sixteen years of collections on a voluntary basis is a referendum in and of itself. The proposed legislation would direct the Secretary of Agriculture to amend the current Potato Research and Promotion Plan so as to put the needed changes into effect.

The Plan would not be left without safeguards for accountability. They would be the same as now exist with the beef program and several other industry supported research and promotion programs. The Secretary and his staff would still monitor our program and could still terminate the Plan, or act

upon the request of ten percent of growers to hold a referendum to determine whether producers want to terminate or suspend the Plan.

Let me summarize. The proposed legislation would correct present inequities that exist under the Potato Research and Promotion Act of 1971. It would result in assessments being levied on imported potatoes as well as potatoes produced in the United States, in the elimination of a refund provision, and in making the needed changes without conducting a referendum among potato producers. The results of the efforts of the Board to substantially improve the markets for potatoes has benefitted all producers. This means foreign producers who export to the United States as well as all producers in the United States regardless of their size or geographic location. The Council feels strongly that because all producers share in the benefits of the program, all producers should pay their fair share of the costs involved.

Mr. Chairman, we deeply appreciate the opportunity to appear before your subcommittee. I or my colleagues would be glad to answer any questions that you or the subcommittee members may have.

TESTIMONY OF W. DONALD DRESSER
EXECUTIVE VICE PRESIDENT, UNITED FOODS, INC.
BEFORE THE HOUSE AGRICULTURE DOMESTIC MARKETING,
CONSUMER RELATIONS & NUTRITION SUBCOMMITTEE

JULY 25, 1989

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to testify in opposition to H.R. 2187, the Fresh Mushroom Promotion, Research and Consumer Information Act.

United Foods has been in the vegetable business for almost 50 years. Today we have facilities for processing and distributing vegetables in Minnesota, Utah, Tennessee, Oregon and California. We have substantial experience in marketing and distributing vegetables. Our principal brand - Pictsweet - is sold nationwide.

United Foods entered the mushroom business by acquiring three mushroom farms in late 1987 from the trustee in bankruptcy for Mushroom King, Inc, an unrelated company. These three farms are located in Ventura, California; Salem, Oregon and Fillmore, Utah. They employ almost 800 people. The three farms produce almost 40 million pounds of mushrooms each year. This amounts to around 8% or 9% of all of the fresh mushrooms sold in the United States. United Foods is repairing the problems which led to Mushroom King's bankruptcy. We believe that we can make the three farms successful and that the jobs at the three farms will be saved.

In a moment, I am going to talk about how H.R. 2187 would, if enacted, damage the process that we are going through to repair our mushroom farms. First, however, let me focus on what we believe is the worst feature of H.R. 2187. That is the extraordinary amount of money that the

legislation, if enacted, would allow a mushroom association to collect from mushroom growers. When I come back in a moment to talk about our three farms, I would like to make the point that the money that would be assessed from United Foods under this legislation can better be spent finishing the job that we have begun of saving our three farms.

H.R. 2187 would authorize a mushroom council to assess 2 cents against every pound of mushrooms that United Foods and other growers produce. In the case of United Foods, 2 cents a pound would cost us between \$750,000 and \$800,000 per year. This is a very large amount of money. I believe that it is higher in percentage terms than the amount assessed under any other similar program. This assessment of 2 cents a pound represents 30% to 50% of the net profits of all of the mushroom growers in the United States taken in the aggregate. In other words, the amount of the assessment is on the same order of magnitude for mushroom growers as the federal income tax.

The amount of the assessment is particularly troublesome in view of the lack of any concrete proposal by the proponents as to how the money would be spent. All of the detail as to how and why to spend the money is left for later after it is collected. There have, of course, been various proposals put forward as to different ways the money could be spent. Because we are acutely aware of the magnitude of our contribution, we have paid close attention to those proposals to see if there were any that we could support. Unfortunately, there were no proposals made that would confer any significant benefit on United Foods. In the event that H.R. 2187 is enacted, therefore, we face not only the burden of paying a significant tax but the embarrassment of paying a tax for which we receive no services or benefits in return.

The amount of the assessment is also unfair in view of the peculiar voting arrangements that the legislation would establish. In the initial referendum, and any subsequent referendum, and apparently in connection with votes to determine how funds should be spent, all mushroom growers will have an equal vote. The five largest growers, however, produce more than 50% of the mushrooms grown in the United States but would have less than 5% of the vote -- more than a 10 to 1 discrepancy. Thus even if the producers of the great majority of mushrooms were to determine that the research and promotion order was not accomplishing its purposes and sought to amend or rescind it, they might be unable to do so because voting control would remain with producers representing a minority of the production.

H.R. 2187, if enacted, will interfere with United Foods' ability to complete the job that we have begun of repairing and saving our three farms. The \$750,000 to \$800,000 assessment necessarily will come out of funds that otherwise would be available for productive use at the farms. But that is not the whole problem; some of the activities in which the mushroom council states that it would engage will be counter to our interests. I would like to focus on five specific areas where H.R. 2187 will interfere with our ability to repair our farms and improve our mushroom business. These areas are capital expenditures; research and development; marketing; exports; and relations with our employees.

1. Capital Expenditures. The easiest problem area to understand involves our need to make significant capital expenditures to stay in business. During the five years before United Foods acquired the farms in late 1987, prior owners of the farms had spent very little

money on maintaining or improving the farms. Consequently, we need to invest substantial amounts of capital so as to restore the farms' productivity, improve the quality of their product, and make the farms a better and safer workplace for our employees.

H.R. 2187, if enacted, would be detrimental to our capital reinvestment program simply because it would subtract from the money available for these needed capital repairs. United Foods ceased paying dividends in 1987, partly because we desired to increase the amount of money available for rebuilding plant and facilities. We do not have any other pool of uncommitted funds on which to draw to pay for such projects. A 2 cents per pound assessment therefore necessarily will be funded at the expense of some capital projects that we otherwise would pursue.

2. Research and Development. United Foods currently is engaged in a number of research and development projects of a proprietary nature relating to our mushroom business. The improvements that we hope will result from these efforts will be important to the success of our mushroom farms.

The proponents of H.R. 2187 claim that some of the funds to be assessed against industry members pursuant to that legislation will be used by the mushroom council for research and development activities. We are not aware of any research activities to be undertaken by the mushroom council that would have any particular usefulness for the United Foods' farms.

If United Foods is required to pay a 2 cent a pound assessment, the funds will have to come from somewhere. Continuing or expanding our proprietary research projects is, like our capital expenditure program, one of the few areas when we are free to make cutbacks to pay for the assessment.

3. Marketing and Promotion. United Foods markets the mushrooms that it produces under the Pictsweet label. We commenced using the Pictsweet label earlier this year after we felt that our farms were providing the quality and service that we like to have associated with our Pictsweet name. Consumer response to this branded program has been good.

Some of the proponents of H.R. 2187 state that they would spend some of the funds that the mushroom council collects on generic advertising and promotion of mushrooms, both at the trade and consumer level. In our judgment, this would be disadvantageous for United Foods. It would undercut the efforts that we have made to create and promote a branded image that the trade and consumers associate with our standards of quality and service and price. Generic advertising instead suggests to the trade and to consumers that all mushrooms and all mushroom farms are equal and alike, which of course they are not.

There are two other problems with the generic advertising program. The first is that there is not enough money to make it work. Based on the experience that United Foods has had in earlier years with generic advertising of frozen vegetables and the experience that we understand other industries have had under various research and promotion orders, we have concluded that the amount of money that the mushroom council might put into

a generic advertising program is much too small to be effective. At least some of the proponents of H.R. 2187 have agreed with me that there will not be sufficient funds available to conduct a nationwide program.

This leads to the second problem with a generic advertising program. As the legislation has been drawn, voting control of the mushroom council will be concentrated in the two regions where a large majority of the U. S. mushroom growers are located: Pennsylvania and Northern California. It is reasonable to expect that the geographic concentration of growers in those two areas will cause proportionately more funds to be spent for the benefit of growers in those two regions than for growers like United Foods which are located in other regions. The split in the industry between those growers in favor and those growers opposed to this legislation follows the same regional lines. The most vocal proponents are from farms in Pennsylvania and Northern California. The most vocal opponents of the legislation have been the nation's first and fourth largest mushroom growers, Campbell Soup and United Foods, which have nearly all of their farms outside of Pennsylvania and Northern California.

4. Exports. Another element of United Foods' success with the three mushroom farms it acquired is promoting the export of mushrooms to other countries such as Japan and Canada. H.R. 2187, if enacted, might deter export sales. Such sales typically have higher transportation costs and thus lower margins. In some instances, the 2 cents a pound assessment would exceed the margin available from such sales and thus could make those export sales uneconomic.

There is some language in the proposed bill which could be interpreted to exempt export sales from the assessment. If that is the correct interpretation, which I doubt, then a question arises whether that exemption is consistent with GATT and the recently concluded trade agreement with Canada.

5. Employee Relations. Finally, perhaps the most important ingredient in United Foods' success has been the innovative profit sharing program that we created at each of the three farms. H.R. 2187 would damage this program by taking money out of every employee's pocket and undercutting the benefits that the profit sharing program has produced.

The profit sharing program that we created works as follows. Each of the three mushroom farms is a separate profit center, and is responsible for its own purchasing, sales, accounting and so forth. On a quarterly basis, at each farm, we pay out a profit sharing bonus equal to 20% of the pre-tax net profits earned by that farm during that period. That share of profits is divided among all employees who worked at the farm during the quarter, in proportion to their gross wages. This program had the initial affect of overcoming morale problems associated with the bankruptcy, and encouraging key employees to stay. It has, subsequently, taught all employees to be sensitive to costs, to quality and to service for our customers.

Because of this profit sharing program, the 2 cent per pound assessment would not just be a tax on United Foods. It would be a direct tax on the earnings of the employees. 20% of that 2 cents per pound, or 0.4 cents per pound, will come directly out of the employees' quarterly profit sharing payments. The practical affect will be to reduce the bonus by various amounts, ranging from 25% to 100%, at our three farms. This will damage the goodwill that we have earned from our employees and undercut the resulting improvements in quality and productivity that we have enjoyed.

Finally, the mushroom industry is not one that is in trouble or needs special help. Mushroom consumption in this country has been growing steadily for a number of years, faster than the growth rate of any other vegetable that United Foods sells. Technological improvements have taken place over the past few years which have made mushroom farms substantially more efficient and more productive than they were 10 years ago. Both of these trends will continue to take place without any federal assistance or federally sponsored programs. H.R. 2187 would damage rather than encourage those two beneficial trends.

Potential of Enhanced Research Support
for University-Based Research to Assist the
United States Mushroom Industry

Testimony presented to the Subcommittee on Domestic Marketing,
Consumer Relations, and Nutrition,
Committee on Agriculture,
U.S. House of Representatives

July 25, 1989

in regard to the
Fresh Mushroom Promotion, Research, and
Public Information Act

Robert B. Beelman
Professor of Food Science
College of Agriculture
The Pennsylvania State University

Future growth and vitality of any industry operating in a competitive marketplace is highly dependent upon basic research and development and application of new technology. The U.S. mushroom industry is no exception. With this in mind, I am pleased to provide testimony regarding the importance of University-based research to the future of our mushroom industry.

My background includes nearly 20 years of research experience with mushrooms at Penn State. However, mushroom science has been a successful and respected program unique to Penn State as a land-grant university for 60 years, and currently involves numerous researchers from several academic departments within our College of Agriculture. Thus, I hope to describe the needed areas of future research perceived by our faculty and the challenges and rewards that could be garnered by an increased research emphasis occurring as a result of this proposed Act.

Past research at Penn State has been extremely successful in helping mushroom farmers dramatically increase production yields. However, the current challenge is to improve fresh market quality and shelf life of the product within the context of high conversion efficiencies, intensive cropping systems and the ever present need for a low per-unit cost of production. This will require research efforts to explore, understand, utilize, and transfer knowledge concerning the biology, physiology, genetics, and husbandry of the common mushroom, Agaricus bisporus, and other more exotic species of mushrooms with regards to quality. If enhanced funding for research were made available as the result of this legislation, areas of research that could be addressed or enhanced are the following:

1. Basic Research and Cultural Practices

New research could help identify the basic biological, biochemical, and physiological processes responsible for desirable and undesirable quality properties. Once understood, an attempt will be made to stimulate those processes that produce desirable traits and to suppress those that product undesirable traits by altering mushroom growing practices. Harvested mushrooms ordinarily deteriorate rapidly because of their unique physical structure, high metabolic rate (leading to rapid senescence), and the presence of high populations of spoilage organisms.

Thus, attempts will be made to identify methods of growing mushrooms that will:

- A. alter the metabolic rate after harvest to delay senescence (cap opening and stipe growth);
- B. inhibit browning reactions;
- C. maintain firmness;
- D. inhibit toughening;

- E. control microflora responsible for post-harvest darkening, pitting, odor and slime development;
- F. improve flavor, texture, and nutritional value.

2. Genetic Enhancement

Initial and post-harvest quality can be improved by germplasm enhancement.

Objectives of such research would include:

- A. the collection, evaluation, and preservation of new mushroom germplasm;
- B. the development of new and innovative methods for modifying germplasm of edible mushrooms.

A broad base of mushroom germplasm is necessary to provide the genetic diversity that breeders need to improve the quality of mushrooms. An extensive culture collection of nearly 1500 isolates of mushroom strains is maintained in Penn State's mushroom laboratories. This irreplaceable collection must be maintained and added to when appropriate. By systematic exploration of the "centers of origin" for particular mushroom species, new genes or gene combinations may be introduced.

Once genetic resources have been screened, genes for desirable quality traits must be combined into improved strains that will be useful to breeders and to growers. Increased emphasis will be placed on finding ways to shorten the process of strain improvement and to make it more efficient and less costly. The identification of quantitative trait loci (QTL) by pulsed field gradient gel electrophoresis and restriction fragment length polymorphisms will be emphasized.

3. Fruiting and Its Regulation

It is well known that mushroom mycelium will not produce fruit bodies in any quantity until cased (covered with a suitable material). An understanding of the reasons for the fruiting response will contribute to our knowledge of fruiting control as well as be a great benefit to the mushroom grower in enhancing his ability to control quality and quantity of the crop. Research at Penn State has shown a relationship between lipid metabolism and initiation of fruiting. With additional support the chemical, physical, and microbiological properties of casing and compost layers can be studied to determine how they relate to alterations of the physiological responses of the mushroom mycelia in the compost.

4. Mushroom Virus Program

La France disease is one of the major infectious disorders of the common mushroom (*Agaricus bisporus*). the disease is characterized by the appearance of several dsRNA viruses and a ssRNA virus with the onset of acute symptoms and their apparent and complete loss with a remission of symptoms. Currently, it remains unclear which virus may be the etiologic agents of these viruses. Whether the conversion from an active infection involves integration of the viral genome into the host DNA is not known.

With increased research support, contemporary molecular approaches will be used to investigate viral replication and pathogenesis in La France disease. Short and long term goals of the program will be to:

- A. biochemically characterize the viruses;
- B. develop improved diagnostic tests using DNA probes or polyclonal or monoclonal antibodies;

-5-

- C. study virus replication in protoplasts and mycelium to elucidate the molecular basis of chronic and acute infection;
- D. produce "virus free" mushroom germplasm;
- E. construct a virus-based gene vector.

5. Pathogenesis and Microbiology

Beneficial and deleterious microorganisms, chemicals, and a complex substrate constitute the mushroom's ecosystem. Some intrinsic relationships between and among organisms are understood. With the help of industry support to Penn State, organisms recognized as models for interactive ecological systems will be used to elucidate action modes of organisms closely related to the crop. The overriding objective for this research is to improve mushroom quality by identifying alternative management schemes for the crop.

**STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
 TO THE HOUSE AGRICULTURE COMMITTEE
 SUBCOMMITTEE ON DOMESTIC MARKETING, CONSUMER
 RELATIONS AND NUTRITION
 WITH REGARD TO H.R. 2257,
 THE POTATO RESEARCH AND PROMOTION ACT AMENDMENTS OF 1989
 AND
 WITH REGARD TO H.R. 2187
 THE FRESH MUSHROOM PROMOTION, RESEARCH,
 AND CONSUMER INFORMATION ACT
 JULY 25, 1989**

AFBF has for many years recognized the right of producers to establish and fund programs designed to promote increased research, sales and consumption of the commodities they produce. As a general farm organization representing producers in 49 states and Puerto Rico, our members produce virtually every commercially produced agricultural commodity. Our membership feels it is imperative that commodity specific checkoff programs be structured to provide producer control and safeguards against the program's misuse of funds or engaging in inappropriate activity.

It is important to remember these research and promotion programs have the potential to increase returns to the producers of the commodity. At the same time, the funds collected from farmers are of significant magnitude both in total and to the individual producer. We estimate that approximately \$500 million is being collected annually to fund programs for a variety of commodity checkoffs in place today. This is a large sum in the aggregate. On the other hand, an individual's contribution of one-half of one percent of the value of his product amounts to 10 percent of his net profit if he is operating at a 5 percent profit margin, as is typical for many farmers. The point is that these funds add up to significant sums. The growers funding these programs need to exercise control over the program so that the resources collected from farmers are utilized in an effective and efficient manner. If this producer control is not assured, farmers may come to view the collection of these funds as an imposed tax rather than as a worth while contribution to a cooperatively developed, administered and funded grower effort.

Farm Bureau has developed policy over the years which addresses specific provisions that should be included in a checkoff program in order for us to support its establishment. These provisions are mainly intended to provide producer control and limit the use of funds to proper activities for checkoff programs. Many of the specifics we require were included as provisions of the Agricultural Marketing Agreement Act of 1937 and are, therefore, grounded in historical legislative precedent. The list of safeguards included in Farm Bureau policy are:

- (1) Approval by producer referendum prior to implementation of a program;

(2) Referendum procedures which protect voting rights, provide uniform voting procedures and encourage maximum participation by producers;

(3) Producer control over the program. There should be opportunity for refunds of assessments without undue difficulty. For programs that do not allow a refund, a periodic referendum to determine continuation or termination of the program should be held at intervals not to exceed five years; however, a referendum shall be held at any time upon petition of at least 10 percent of the registered producers in any area covered by the program;

(4) Producer control of the board administering the program; and,

(5) Limitations on the use of funds for promotion, market development and research only. Grower educational programs should be limited to project information and financial statements.

H.R. 2257, the Potato Research and Promotion Act Amendments of 1969, would delete the present refund provision available to producers and add a provision to assess imports. Our policy would call for a periodic referendum every five (5) years be included in the legislation if the refund provision is removed from the act. The provision on foreign produced potato imports is very important to the program since potato imports will share in the benefits of any domestic market development or promotion program and should share in the cost of these programs.

H.R. 2187, the Fresh Mushroom Promotion, Research, and Consumer Information Act, contains an upfront referendum but should be amended to include two other areas of concern. The first amendment would be the inclusion of a continuation referendum every five (5) years if the "no refund" provision is to be included in the final bill. The second amendment we would suggest is that the number of producers and importers required to request a continuation referendum should be changed from 30 percent to 10 percent.

The committee may want to consider developing generic commodity promotion legislation that would establish overall guidelines for development of commodity specific promotion and research programs. If pursued this legislation should include provisions that provide protection for producers and assure producer control of the program as outlined in our policy position.

AFBF supports allowing producers to establish programs that provide research and promotion of their products. Control of these programs must remain in the hands of producers. We feel that the policy position our members have established will provide for strong promotion programs under producer control.

101ST CONGRESS
1ST SESSION

H. R. 2187

To enable producers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for fresh mushroom promotion, research, and consumer information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1989

Mr. PANETTA (for himself, Mr. SCHULZE, Mr. HATCHER, Mr. EMERSON, Mr. COELHO, Mr. SYNAR, Mr. STAGGERS, Mr. GRANT, Mr. GEJDENSON, Mr. TALLON, and Mr. ESPY) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To enable producers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for fresh mushroom promotion, research, and consumer information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1.—This Act may be cited as the “Fresh
5 Mushroom Promotion, Research, and Consumer Information
6 Act”.

7 FINDINGS AND DECLARATION OF POLICY

8 SEC. 2. (a) FINDINGS.—Congress finds that—

1 (1) fresh mushrooms are an important food that is
2 a valuable part of the human diet;

3 (2) the production of mushrooms plays a signifi-
4 cant role in the Nation's economy in that mushrooms
5 for the fresh market are produced by hundreds of
6 mushroom producers, distributed through thousands of
7 wholesale and retail outlets, and consumed by millions
8 of people throughout the United States and foreign
9 countries;

10 (3) mushroom production benefits the environment
11 by efficiently using agricultural byproducts;

12 (4) mushrooms for the fresh market must be high
13 quality, readily available, handled properly, and mar-
14 keted efficiently to ensure that the benefits of this im-
15 portant product are available to the people of the
16 United States;

17 (5) the maintenance and expansion of existing
18 markets and uses, and the development of new markets
19 and uses, for fresh mushrooms are vital to the welfare
20 of producers and those concerned with marketing,
21 using, and producing mushrooms for the fresh market,
22 as well as to the agricultural economy of the Nation;

23 (6) the cooperative development, financing, and
24 implementation of a coordinated program of fresh
25 mushroom promotion, research, and consumer informa-

1 tion are necessary to maintain and expand existing
2 markets for fresh mushrooms; and

3 (7) mushrooms for the fresh market move in inter-
4 state and foreign commerce, and fresh mushrooms that
5 do not move in such channels of commerce directly
6 burden or affect interstate commerce in fresh mush-
7 rooms.

8 (b) POLICY.—It is declared to be the policy of Congress
9 that it is in the public interest to authorize the establishment,
10 through the exercise of the powers provided in this Act, of an
11 orderly procedure for developing, financing through adequate
12 assessments on mushrooms for the fresh market produced do-
13 mestically or imported into the United States, and carrying
14 out an effective, continuous, and coordinated program of pro-
15 motion, research, and consumer information designed to
16 strengthen the fresh mushroom industry's position in the
17 marketplace and to maintain and expand existing domestic
18 and foreign markets and uses for fresh mushrooms and devel-
19 op new markets and uses for fresh mushrooms.

20 (c) CONSTRUCTION.—Nothing in this Act may be con-
21 strued to provide for the control of production or otherwise
22 limit the right of individual producers to produce mushrooms.

23 DEFINITIONS

24 SEC. 3. As used in this Act—

25 (1) the term "Council" means the Mushroom
26 Council established under section 5(a) of this Act;

1 (2) the term "Secretary" means the Secretary of
2 Agriculture;

3 (3) the term "Department" means the Depart-
4 ment of Agriculture;

5 (4) the term "person" means any individual,
6 group of individuals, partnership, corporation, associa-
7 tion, cooperative, or any other legal entity;

8 (5) the terms "fresh mushrooms" and "mush-
9 rooms for the fresh market" include all varieties of cul-
10 tivated mushrooms commercially grown within the
11 United States or imported into the United States that
12 are introduced into the channels of commerce, except
13 for mushrooms that are commercially marinated,
14 canned, frozen, cooked, blanched, dried, packaged in
15 brine, or otherwise processed, as may be determined by
16 the Secretary;

17 (6) the term "producer" means any person en-
18 gaged in the production of mushrooms who owns or
19 who shares the ownership and risk of loss of such
20 mushrooms and who produces, on average, over
21 500,000 pounds of mushrooms for the fresh market per
22 year;

23 (7) the term "importer" means any person who
24 imports, on average, over 500,000 pounds of mush-
25 rooms for the fresh market annually from outside the

5

1 United States or who acts, with respect to an amount
2 of mushrooms for the fresh market that, on average,
3 exceeds 500,000 pounds annually, as agent, broker, or
4 consignee of any person or nation that produces mush-
5 rooms outside the United States for sale in the United
6 States;

7 (8) the term "first handler" means any person, as
8 described in an order issued under this Act, who re-
9 ceives or otherwise acquires mushrooms from a produc-
10 er and prepares for marketing or markets such mush-
11 rooms, including mushrooms of the person's own
12 production;

13 (9) the term "marketing" means the sale or other
14 disposition of mushrooms in any channel of commerce;

15 (10) the term "commerce" means interstate, for-
16 eign, or intrastate commerce;

17 (11) the term "United States" means the fifty
18 States of the United States of America and the District
19 of Columbia;

20 (12) the term "promotion" means any action
21 determined by the Secretary to enhance the image
22 or desirability of fresh mushrooms, including paid ad-
23 vertising;

24 (13) the term "research" means any type of study
25 to advance the image, desirability, marketability, pro-

1 duction, product development, quality, or nutritional
2 value of fresh mushrooms;

3 (14) the term "consumer information" means in-
4 formation and programs that will assist consumers and
5 other persons in making evaluations and decisions re-
6 garding the purchase, preparation, and use of fresh
7 mushrooms; and

8 (15) the term "industry information" means infor-
9 mation and programs that will lead to the development
10 of new markets and marketing strategies, increased ef-
11 ficiency, and activities to enhance the image of the
12 fresh mushroom industry.

13 ISSUANCE OF ORDERS

14 SEC. 4. (a) GENERAL.—To effectuate the declared
15 policy of section 2(b) of this Act, the Secretary, subject to the
16 procedures provided in subsection (b), shall issue orders under
17 this Act applicable to producers, importers, and first handlers
18 of mushrooms for the fresh market. Any such order shall be
19 national in scope. Not more than one order shall be in effect
20 under this Act at any one time.

21 (b) PROCEDURES.—(1) The Secretary may propose the
22 issuance of an order under this Act, or an association of
23 mushroom producers or any other person that will be affected
24 by this Act may request the issuance of, and submit a propos-
25 al for, such an order.

1 (2) Not later than thirty days after the receipt of a re-
2 quest and proposal by an interested person for an order, or
3 when the Secretary determines to propose an order, the Sec-
4 retary shall publish the proposed order and give due notice
5 and opportunity for public comment on the proposed order.

6 (3) After notice and opportunity for public comment are
7 given, as provided in paragraph (2), the Secretary shall issue
8 the order, taking into consideration the comments received
9 and including therein provisions necessary to ensure that the
10 order is in conformity with the requirements under this Act.
11 Such order shall be issued and, after approval by producers
12 and importers of mushrooms as provided in section 6(a), shall
13 become effective not later than one hundred and twenty days
14 following publication of the proposed order.

15 (c) AMENDMENTS.—(1) The Secretary, from time to
16 time, may amend any order issued under this section.

17 (2) The provisions of this Act applicable to an order
18 shall be applicable to amendments to the order.

19 REQUIRED TERMS IN ORDERS

20 SEC. 5. Each order issued under this Act shall contain
21 the following terms and conditions:

22 (a) MUSHROOM COUNCIL.—(1) The order shall provide
23 for the establishment of, and selection of members to, a
24 Mushroom Council that shall consist of at least four members
25 and not more than nine members. The members of the Coun-
26 cil shall be fresh mushroom producers and importers appoint-

1 ed by the Secretary from nominations submitted by producers
2 and importers in the manner authorized by the Secretary,
3 subject to the provisions of paragraph (2): *Provided*, That no
4 more than one member may be appointed to the Council from
5 nominations submitted by any one producer or importer.

6 (2) In making appointments, the Secretary shall take
7 into account, to the extent practicable, the geographical dis-
8 tribution of mushroom production throughout the United
9 States, and the comparative volume of mushrooms for the
10 fresh market imported into the United States. In establishing
11 such geographical distribution, a whole State shall be consid-
12 ered as a unit and such units shall be organized into four
13 regions that shall fairly represent the geographic distribution
14 of mushroom production within the United States. Importers
15 shall be represented as a separate region. The Secretary shall
16 appoint one member from each region that produces or im-
17 ports, on average, at least 35,000,000 pounds of fresh mush-
18 rooms annually. Subject to the nine member limit on the
19 number of members on the Council provided in paragraph (1),
20 the Secretary shall appoint an additional member to the
21 Council for each additional 50,000,000 pounds of production
22 or imports per year, on average, within the region.

23 (3) The term of appointment to the Council shall be for
24 three years, except that the initial appointments shall to the
25 extent practicable be proportionately for one-year, two-year,

1 and three-year terms. Council members shall serve without
2 compensation but shall be reimbursed for their expenses in-
3 curred in performing their duties as members of the Council.

4 (b) POWERS AND DUTIES OF THE COUNCIL.—The
5 order shall define the powers and duties of the Council, which
6 shall include only the following powers:

7 (1) To administer the order in accordance with its
8 terms and provisions;

9 (2) To make regulations to effectuate the terms
10 and provisions of the order;

11 (3) To appoint members of the Council to serve
12 on an executive committee;

13 (4) To propose, receive, evaluate, and approve
14 budgets, plans, and projects of fresh mushroom promo-
15 tion, research, consumer information, and industry in-
16 formation, as well as to contract with appropriate per-
17 sons to implement plans or projects;

18 (5) To develop and propose to the Secretary vol-
19 untary quality and grade standards for fresh mush-
20 rooms;

21 (6) To receive, investigate, and report to the Sec-
22 retary complaints of violations of the order;

23 (7) To recommend to the Secretary amendments
24 to the order; and

1 (8) To invest, pending disbursement under a plan
2 or project, funds collected through assessments author-
3 ized under this Act, only in obligations of the United
4 States or any agency thereof, in general obligations of
5 any State or any political subdivision thereof, in any
6 interest-bearing account or certificate of deposit of a
7 bank that is a member of the Federal Reserve System,
8 or in obligations fully guaranteed as to principal and
9 interest by the United States.

10 (c) PLANS AND BUDGETS.—(1) The order shall provide
11 that the Council shall submit to the Secretary for approval
12 any plan or project of promotion, research, consumer infor-
13 mation, and industry information.

14 (2) The order shall require the Council to submit to the
15 Secretary for approval budgets on a fiscal year basis of its
16 anticipated expenses and disbursements in the implementa-
17 tion of the order, including projected costs of promotion, re-
18 search, consumer information, and industry information plans
19 and projects.

20 (3) No plan or project of promotion, research, consumer
21 information, or industry information, or budget, shall be im-
22 plemented prior to its approval by the Secretary.

23 (d) CONTRACTS AND AGREEMENTS.—(1) To ensure ef-
24 ficient use of funds, the order shall provide that the Council
25 may enter into contracts or agreements for the implementa-

tion and carrying out of plans or projects of fresh mushroom promotion, research, consumer information, and industry information, including contracts with producer organizations, and for the payment of the cost thereof with funds collected under the order. Any such contract or agreement shall provide that (A) the contracting party shall develop and submit to the Council a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project; (B) the plan or project shall become effective on the approval of the Secretary, and (C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Council of activities conducted, and such other reports as the Council or the Secretary may require.

(2) The order shall provide that the Council may contract with producer organizations for any other services. Any such contract shall include provisions comparable to those provided in subparagraphs (A), (B), and (C) of subparagraph (1).

(e) BOOKS AND RECORDS.—The order shall require the Council to (1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe; (2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may

1 prescribe; and (3) account for the receipt and disbursement of
2 all funds entrusted to it.

3 (f) ASSESSMENTS.—(1) The order shall provide that
4 each first handler of mushrooms for the domestic fresh
5 market produced in the United States shall collect, in the
6 manner prescribed by the order, assessments from producers
7 and remit the assessments to the Council. The order also
8 shall provide that each importer of mushrooms for the domes-
9 tic fresh market shall pay assessments to the Council in the
10 manner prescribed by the order. Any person marketing mush-
11 rooms of that person's own production directly to consumers
12 shall remit the assessments on such mushrooms directly to
13 the Council in the manner prescribed in the order.

14 (2) The order shall provide that the assessments shall be
15 used for payment of the expenses in implementing and ad-
16 ministering the order, with provision for a reasonable re-
17 serve, and to cover those administrative costs incurred by the
18 Secretary after the order has been promulgated under this
19 Act. The rate of assessment prescribed by the order shall be
20 one-half cent per pound of mushrooms for the fresh market in
21 the first year of the order, and one cent per pound of mush-
22 rooms for the fresh market in the second year of the order;
23 and thereafter, the assessment rate prescribed by the order
24 may not exceed two cents per pound of mushrooms.

1 (3) No assessment may be collected on mushrooms that
2 a first handler certifies will be exported as fresh mushrooms.

3 (g) PROHIBITION.—The order shall prohibit any funds
4 collected by the Council under the order from being used in
5 any manner for the purpose of influencing government action
6 or policy, except that such funds may be used by the Council
7 for the development and recommendation to the Secretary of
8 amendments to the order as prescribed in this Act and for the
9 submission to the Secretary of voluntary grade and quality
10 standards for mushrooms under the Agricultural Marketing
11 Act of 1946.

12 (h) BOOKS AND RECORDS.—(1) The order shall require
13 that each handler of mushrooms for the fresh market or im-
14 porter of fresh mushrooms maintain, and make available for
15 inspection, such books and records as may be required by the
16 order and file reports at the time, in the manner, and having
17 the content prescribed by the order. In addition, the Secre-
18 tary shall authorize the use of information regarding handlers
19 and importers that may be accumulated under a law or regu-
20 lation other than this Act or regulations under this Act. Such
21 information shall be made available to the Secretary as is
22 appropriate to the administration or enforcement of this Act,
23 the order, or any regulation issued under this Act.

24 (2) All information obtained by the Secretary under
25 paragraph (1) of this subsection shall be kept confidential by

1 all officers and employees of the Department, and only such
2 information so obtained as the Secretary deems relevant may
3 be disclosed by them and then only in a suit or administrative
4 hearing brought at the request of the Secretary, or to which
5 the Secretary or any officer of the United States is a party,
6 and involving the order. Nothing in this paragraph may be
7 deemed to prohibit (A) the issuance of general statements,
8 based upon the reports, of the number of persons subject to
9 the order or statistical data collected therefrom, which state-
10 ments do not identify the information furnished by any
11 person, or (B) the publication, by direction of the Secretary,
12 of the name of any person violating the order, together with a
13 statement of the particular provisions of the order violated by
14 such person.

15 (3) No information obtained under the authority of this
16 Act may be made available to any agency or officer of the
17 Federal Government for any purpose other than the imple-
18 mentation of this Act and any investigatory or enforcement
19 act necessary for the implementation of this Act. Any person
20 violating the provisions of this paragraph, upon conviction,
21 shall be subject to a fine of not more than \$1,000 or to im-
22 prisonment for not more than one year, or both, and if an
23 officer or employee of the Council or the Department, shall
24 be removed from office.

1 (4) Nothing in this subsection shall authorize the Secre-
2 tary to withhold information from a duly authorized commit-
3 tee or subcommittee of Congress.

4 (i) OTHER TERMS AND CONDITIONS.—The order also
5 shall contain such terms and conditions, not inconsistent with
6 the provisions of this Act, as necessary to effectuate the pro-
7 visions of this Act.

8 REQUIREMENT OF REFERENDA

9 SEC. 6. (a) INITIAL REFERENDUM.—Within the sixty-
10 day period immediately preceding the effective date of an
11 order, as provided in section 4(b), the Secretary shall conduct
12 a referendum among producers and importers of mushrooms
13 who, during a representative period as determined by the
14 Secretary, have been engaged in the production or importa-
15 tion of mushrooms for the fresh market. The purpose of the
16 referendum shall be to ascertain whether the order shall go
17 into effect. The order shall become effective, as provided in
18 section 4(b), only if the Secretary determined that it has been
19 approved by not less than a majority of those eligible and
20 voting in the referendum.

21 (b) SUCCEEDING REFERENDA.—No sooner than three
22 years following the effective date of an order, the Secretary
23 may conduct a referendum on the request of a representative
24 group comprising 30 percent or more of the number of pro-
25 ducers and importers of mushrooms who, during a represent-
26 ative period as determined by the Secretary, have been en-

1 gaged in the production or importation of mushrooms for the
2 fresh market to determine whether producers and importers
3 favor the termination or suspension of the order. The Secre-
4 tary shall suspend or terminate collection of assessments
5 under the order within six months after the Secretary deter-
6 mines that suspension or termination of the order is favored
7 by at least two-thirds of those eligible and voting in any such
8 referendum who, during a representative period as deter-
9 mined by the Secretary, have been engaged in the production
10 or importation of mushrooms for the fresh market, and shall
11 suspend or terminate the order in an orderly manner as soon
12 as practicable after such determination.

13 (c) COSTS OF REFERENDUM.—The Secretary shall be
14 reimbursed from any assessments collected by the Council for
15 any expenses incurred by the Department in connection with
16 the conduct of any referendum under this section, except for
17 the salaries of Government employees. Referenda conducted
18 pursuant to this section shall be conducted in such a manner
19 as determined by the Secretary.

20

PETITION AND REVIEW

21 SEC. 7. (a) IN GENERAL.—Any person subject to an
22 order issued under this Act may file with the Secretary a
23 petition stating that the order or any provision of the order or
24 any obligation imposed in connection therewith is not in ac-
25 cordance with law and requesting a modification thereof or
26 an exemption therefrom. The petitioner thereupon shall be

1 given the opportunity for a hearing on the petition, in accord-
2 ance with regulations issued by the Secretary. After such
3 hearing, the Secretary shall make a ruling on the petition,
4 which shall be final if in accordance with law.

5 (b) DISTRICT COURT JURISDICTION.—The district
6 courts of the United States in any district in which such
7 person is an inhabitant or carries on business are hereby
8 vested with jurisdiction to review such ruling, if a complaint
9 for that purpose is filed within twenty days after the date of
10 the entry of such ruling. Service of process in such proceed-
11 ings may be had on the Secretary by delivering a copy of the
12 complaint to the Secretary, pursuant to such regulations as
13 the Secretary may prescribe. If the court determines that
14 such ruling is not in accordance with law, it shall remand
15 such proceedings to the Secretary with directions either (1) to
16 make such ruling as the court shall determine to be in ac-
17 cordance with law, or (2) to take such further proceedings as,
18 in its opinion, the law requires. The pendency of proceedings
19 instituted pursuant to subsection (a) of this section shall not
20 impede, hinder, or delay the United States or the Secretary
21 from obtaining relief pursuant to section 8 of this Act.

22

ENFORCEMENT

23 SEC. 8. The Secretary may issue orders to restrain or
24 prevent any person from violating an order or any regulation
25 issued under this Act and may assess a civil penalty of not
26 more than \$1,000 for violation of the order, following an op-

1 .portunity for an administrative hearing, whenever the Secre-
2 tary believes that the administration and enforcement of this
3 Act and the order would be adequately served by such a
4 procedure. The district courts of the United States are vested
5 with jurisdiction specifically to enforce, and to prevent and
6 restrain any person from violating, the order or any regula-
7 tion made or issued under this Act. Any civil action author-
8 ized to be brought under this section shall be referred to the
9 Attorney General for appropriate action.

10 INVESTIGATIONS: POWER TO SUBPOENA AND TAKE OATHS

11 AND AFFIRMATIONS: AID OF COURTS

12 SEC. 9. The Secretary may make such investigations as
13 the Secretary deems necessary for the effective administra-
14 tion of this Act or to determine whether any person subject to
15 the provisions of this Act has engaged or is about to engage
16 in any act that constitutes or will constitute a violation of any
17 provision of this Act or of any order or regulation issued
18 under this Act. For the purpose of such investigation, the
19 Secretary may administer oaths and affirmations, subpoena
20 witnesses, compel their attendance, take evidence, and re-
21 quire the production of any records that are relevant to the
22 inquiry. Such attendance of witnesses and the production of
23 any such records may be required from any place in the
24 United States. In case of contumacy by, or refusal to obey a
25 subpoena issued to, any person, the Secretary may invoke
26 the aid of any court of the United States within the jurisdic-

1 tion of which such investigation or proceeding is carried on,
2 or where such person resides or carries on business, in requir-
3 ing the attendance and testimony of the person and the pro-
4 duction of records. The court may issue an order requiring
5 such person to appear before the Secretary to produce
6 records or to give testimony touching the matter under inves-
7 tigation. Any failure to obey such order of the court may be
8 punished by such court as a contempt thereof. Process in any
9 such case may be served in the judicial district in which such
10 person is an inhabitant or wherever such person may be
11 found.

12 SAVINGS PROVISION

13 SEC. 10. Nothing in this Act may be construed to pre-
14 empt or supersede any other program relating to mushroom
15 promotion organized and operated under the laws of the
16 United States or any State.

17 AUTHORIZATION

18 SEC. 11. There are hereby authorized to be appropri-
19 ated such funds as are necessary to carry out the provisions
20 of this Act. The funds so appropriated shall not be available
21 for payment of the expenses or expenditures of the Council in
22 administering any provisions of an order issued under this
23 Act.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

July, 26 1989

Honorable E (Kika) de la Garza
Chairman, Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We appreciate this opportunity to respond to your recent request for a report on H.R. 2187, the "Fresh Mushroom Promotion, Research and Consumer Information Act."

The Department of Agriculture has no objection to the enactment of H.R. 2187 if the bill is amended to address technical and policy concerns outlined in the enclosed statement. The changes recommended for consideration are designed to facilitate the administration and enforcement of H.R. 2187. We will be pleased to work with the Committee staff to draft appropriate bill and report language to address such concerns.

H.R. 2187, if enacted, would enable producers of fresh mushrooms to develop, finance, and carry out a nationally coordinated program for fresh mushroom promotion, research, and consumer information. The program, which would be administered by a Mushroom Council consisting of at least four and not more than nine members as determined by the levels of U.S. production and imports, is expected to generate in excess of \$10 million annually based on a maximum assessment rate of 2-cents per pound. The payment of assessments by producers and importers would be one-half of 1-cent per pound for the first year, 1-cent per pound for the second year, and may not exceed 2-cents per pound thereafter. Producers or importers of less than 500,000 lbs. per year would be exempt from the assessment and other provisions of the legislation.

The bill provides that no later than 60 days prior to the effective date of the order (which is 120-days following publication of the proposed order in the Federal Register), the Secretary must conduct a referendum among producers and importers of mushrooms. Approval is by a simple majority of those eligible and voting in the referendum. No provision is included for assessment refunds under H.R. 2187. The Secretary may conduct a referendum no sooner than 3 years following the effective date of an order if requested by 30 percent of those subject to the order. The bill, unlike other research and promotion programs, also permits the development of proposed voluntary quality and grade standards for fresh mushrooms. The Secretary would be reimbursed for administrative costs incurred after the order has been promulgated, including expenses incurred for the conduct of the referendum, except for Federal salaries. The bill would authorize the Secretary to issue orders to restrain or prevent any person from violating an order or regulation and to assess civil penalties in administrative proceedings. It would also authorize enforcement of the order through the district courts of the United States.

Honorable E (Kika) de la Garza

2.

The Department currently oversees national commodity promotion and research programs for beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, and lamb, wool, and mohair. Authority exists for the floral and wheat industries as well, but programs are not currently in effect for those commodities. National research and promotion programs focus on generic promotion and market development, with a total of more than \$300 million a year used to increase public and commercial awareness of the respective products. The Department does not object to these industry self-help initiatives which are designed to improve the position of the covered commodities in the marketplace.

Mushroom production is located in many States, although several of the largest producing States account for large shares of the annual total. Fresh mushroom production is more widely dispersed than production for processing. Regionally, the East accounted for about 54 percent of the fresh market tonnage in 1987/88. Central States' production accounted for nearly 11 percent, and the West, about 35 percent. Pennsylvania and California continue as the leading States in domestic mushroom production.

U.S. total mushroom production (including exotics) in 1987/88 (year beginning July 1) is estimated at 633.7 million pounds, the largest on record. With the exception of the 1982/83 crop year, mushroom production has trended upward since the mid-1960's. Crop value at the grower level is estimated at about \$544.2 million in 1987/88. This includes sales for fresh market and processing. A total of 356 U.S. growers reported production in 1987/88.

Current imports of fresh mushrooms are very small, well below 1.0 million pounds annually. Canada is the largest source of imports. Very small quantities are also imported from Japan, Italy, France, and New Zealand.

The Department urges the Committee to give full consideration to our recommendations, as detailed in the enclosed statement, to provide (1) full reimbursement to the Department for all startup costs incurred prior to the issuance of the order; (2) for a 60-day period prior to the publication of the proposed order (rather than 30), and for a 180-day period (rather than 120) to give the Secretary sufficient time to review any comments received on a proposed order and to conduct a referendum, (3) for a specific prohibition of the use of assessments to influence legislation; and (4) substantially revised enforcement authority and procedures.

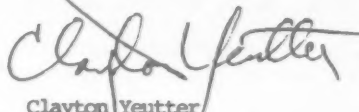
Enactment of this legislation, if amended, would result in reimbursement to the Department of \$45,000 to \$50,000 for all startup costs, including the conduct of the initial referendum. After the order is issued, ongoing administrative costs are expected to approach \$40,000 to \$50,000 annually.

Honorable E (KiKa) de la Garza

3.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



Clayton Yeutter
Secretary

Enclosure

UNITED STATES DEPARTMENT OF AGRICULTURE

COMMENTS ON H.R. 2187
FRESH MUSHROOM PROMOTION, RESEARCH,
AND CONSUMER INFORMATION ACT

Section 4(b)(2) page 7, line 1 — The "thirty" day period should be extended to "sixty" days to give the Secretary sufficient time to review and publish a proposed order in the FEDERAL REGISTER.

Section 4(b)(3) page 7, line 13 — The "one hundred and twenty days" period should be extended to "one hundred eighty days" to give the Secretary sufficient time to review any comments received on a proposed order and conduct a referendum.

Section 5(e), page 12, line 2 — Add a requirement for a financial audit of the Council's books at least once a year.

Section 5(f)(2), page 12, line 18 — After the word "Secretary" delete "after the order has been promulgated under this Act" and insert in lieu thereof "in implementing and administering the Act". This change will provide for full reimbursement to the Department of all costs incurred in implementing and administering these programs. Estimated startup costs are \$35,000; annual administrative costs thereafter are \$40,000 to \$50,000. Recovery of costs for conduct of the referendum pursuant to section 6(c) is \$15,000.

Section 5(f)(3), page 13, lines 1-2 — This provision authorizes an exemption from assessment on mushrooms that a first handler certifies will be exported as fresh mushrooms. The Department recommends that this provision be deleted because it provides inequitable and discriminatory treatment for imported mushrooms when compared with domestically produced mushrooms for export.

Section 5(g), page 13, line 5 — Insert the words "legislation or" after the word "influencing" to conform the prohibition to departmental policy which states that assessment funds shall not be used for the purpose of influencing legislation or governmental policy or action except in recommending amendments to the Secretary.

Section 5(h)(3), page 14, lines 15-19 — Delete the first sentence of section 5(h)(3). This sentence is unnecessary in view of the confidentiality provisions in section 5(h)(2), and it could impair the Department's ability to obtain the assistance of other Federal agencies or to cooperate in appropriate circumstances with such agencies. If this sentence is not deleted, the phrase "and such other purposes consistent with any authorized activity of the Secretary under this Act" should be inserted after the word "Act" in line 19. In the absence of this addition, the language is so broad in its coverage that it could limit the Secretary's ability to effectively oversee the Council's operations.

Section 6(b), page 15, lines 21 and 24 — Insert after the header "The Secretary may conduct a referendum at any time." On line 24, delete "30" and insert "10" in lieu thereof.

101ST CONGRESS
1ST SESSION

H. R. 2257

To amend the Potato Research and Promotion Act to provide improved methods of assessment that will finance a more effective marketing research and promotion program and provide for a more effective consumer information program designed to expand markets for potatoes.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1989

Mr. STALLINGS (for himself, Mr. ROBERT F. (BOB) SMITH, Mr. CRAIG, Mr. MARLENEE, Mr. MARTIN of New York, Mr. HATCHEE, Mr. VANDER JAOT, Mr. COELHO, Mr. PENNY, Mr. DENNY SMITH, Mr. CAMPBELL of Colorado and Mr. JOHNSON of South Dakota) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Potato Research and Promotion Act to provide improved methods of assessment that will finance a more effective marketing research and promotion program and provide for a more effective consumer information program designed to expand markets for potatoes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Potato Research and
5 Promotion Act Amendments of 1989".

1 SEC. 2. REFERENCE.

2 Whenever in this Act an amendment is expressed in
3 terms of an amendment to a section, subsection, or other pro-
4 vision, the reference shall be considered to be made to a sec-
5 tion, subsection, or other provision of the Potato Research
6 and Promotion Act (7 U.S.C. 2611 et seq.).

7 SEC. 3. FINDINGS AND DECLARATION OF POLICY.

8 Section 302 (7 U.S.C. 2611) is amended—

9 (1) by inserting “and foreign countries” before the
10 period in the first sentence of the first undesignated
11 paragraph;

12 (2) by inserting “and are imported into the United
13 States from foreign countries” before the period in the
14 second sentence of the first undesignated paragraph;
15 and

16 (3) by inserting “or imported into the United
17 States from foreign countries” after “the United
18 States” each place it appears in the last undesignated
19 paragraph.

20 SEC. 4. DEFINITIONS.

21 Section 303 (7 U.S.C. 2612) is amended—

22 (1) by striking subsection (c) and inserting the
23 following:

24 “(c) The term ‘potatoes’ means all varieties of Irish
25 potatoes—

26 “(1) grown by producers in the United States; or

1 “(2) imported into the United States.”; and

2 (2) by adding at the end the following new sub-
3 sections:

4 “(h) The term ‘board’ means the National Potato Pro-
5 motion Board.

6 “(i) The term ‘importer’ means any person who—

7 “(1) imports tablestock, frozen, processed, or seed
8 potatoes into the United States; or

9 “(2) acts as an agent, broker, or consignee for any
10 person or foreign country that produces potatoes out-
11 side the United States for sale in the United States.

12 “(j) The term ‘United States’ means the several States
13 and the District of Columbia.”.

14 **SEC. 5. AUTHORITY TO ISSUE A PLAN.**

15 Section 304 (7 U.S.C. 2613) is amended—

16 (1) in the first sentence—

17 (A) by striking “persons engaged in the han-
18 dling of potatoes (hereafter referred to as han-
19 dlers)” and inserting “handlers and importers”;
20 and

21 (B) by inserting “or imported” after “pota-
22 toes handled”; and

23 (2) in the last sentence, by striking “forty-eight
24 contiguous” and all that follows and inserting “United
25 States or imported into the United States.”.

1 SEC. 6. NOTICE AND HEARINGS.

2 Section 305 (7 U.S.C. 2614) is amended by inserting
3 "or importers" after "producers" each place it appears.

4 SEC. 7. REQUIRED TERMS IN PLANS.

5 Section 308 (7 U.S.C. 2617) is amended—

6 (1) in subsection (b)—

7 (A) by inserting ", importers," after "repre-
8 sentatives of producers" in the first sentence;

9 (B) by inserting after the second sentence the
10 following: "Representatives of importers shall be
11 nominated by importers in such manner as may be
12 prescribed by the Secretary."; and

13 (C) by inserting "or importers" after "pro-
14 ducers" in the fourth sentence; and

15 (2) by striking subsection (g) and redesignating
16 subsequent subsections accordingly.

17 SEC. 8. PROHIBITION ON REFUNDS.

18 The Potato Research and Promotion Act (7 U.S.C. 2611
19 et seq.) is amended by inserting after section 308 the follow-
20 ing new section:

21 "PROHIBITION ON REFUNDS

22 "SEC. 308a. With regard to any plan that provides for a
23 refund, the Secretary shall amend such plan to eliminate such
24 refund."

25 SEC. 9. ASSESSMENTS.

26 Section 310 (7 U.S.C. 2619) is amended—

1 (1) by redesignating subsection (c) as subsection
2 (d);

3 (2) by inserting after subsection (b) the following
4 new subsection:

5 “(c)(1) Each importer of tablestock, frozen, processed,
6 or seed potatoes shall pay an assessment, in the manner pre-
7 scribed by the Secretary by a plan under this title, to the
8 board. The board shall recommend to the Secretary and the
9 Secretary shall fix the assessment so that the assessment rate
10 shall equal the rate provided under section 308(e).

11 “(2) Each importer covered by paragraph (1) shall main-
12 tain a separate record indicating the total quantity of table-
13 stock, frozen, processed, or seed potatoes imported into the
14 United States which are included under the terms of the plan
15 as well as those which are exempt under such plan, and shall
16 indicate other such information as may be prescribed by the
17 board.

18 “(3) Each importer covered by paragraph (1) shall main-
19 tain and make available for inspection by the Secretary such
20 books and records as required by the plan and file reports at
21 the times, and in the manner, and having the content pre-
22 scribed by the plan, to the end that information and data shall
23 be made available to the board and Secretary which is appro-
24 priate or necessary to the effectuation, administration, or en-

1 forcement of this title or of any plan or regulation issued
2 pursuant to this title.”; and

3 (3) in subsection (d) (as redesignated in paragraph
4 (1)), by striking “(a) and (b)” and inserting “(a), (b),
5 and (c)”.

6 **SEC. 10. REQUIREMENT OF REFERENDUM.**

7 Section 314 (7 U.S.C. 2623) is amended by adding at
8 the end the following new subsection:

9 “(e) Any plan, or amendment to a plan, issued by the
10 Secretary with regard to the inclusion of importers under this
11 title (including the imposition of assessments on such import-
12 ers) and the repeal of refunds shall—

13 “(1) become effective on the date that the Secre-
14 tary issues the plan or amendment; and

15 “(2) not be subject to a referendum under this
16 section or section 315(b).”.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

Honorable E (Kika) de la Garza
Chairman, Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Oct 13 1989

Dear Mr. Chairman:

We appreciate this opportunity to comment on H.R. 2257, the proposed "Potato Research and Promotion Act Amendments of 1989".

The Department of Agriculture has no objection to the enactment of H.R. 2257 if it is amended to address concerns outlined herein. We will be pleased to work with the Committee and industry representatives to draft appropriate bill and report language to address such concerns.

The Potato Research and Promotion Act (7 U.S.C. 2611-2627) was enacted in 1971 to provide for a coordinated program of research, development, advertising and promotion to maintain and expand domestic and foreign markets for potatoes. The Act authorizes the Potato Research and Promotion Plan (plan) which is administered by the National Potato Promotion Board (board). Funds to administer the plan are derived from assessments on handlers and cannot exceed one-half percent of the past 10-year average of U.S. prices received by growers for all U.S. potatoes. Handlers may collect the assessments from producers whose potatoes are handled under the plan. Currently, the assessment is \$.02 per hundredweight.

H.R. 2257 would amend the Potato Research and Promotion Act to: (1) eliminate the refund provision; (2) provide for assessments on imported tablestock, frozen, processed or seed potatoes; (3) provide for importer representation on the board; (4) extend coverage of the Act to the States of Alaska and Hawaii and to the District of Columbia; and (5) extend comparable reporting and recordkeeping requirements to importers as is currently required of domestic handlers. The bill provides that any amendment to the plan issued pursuant to the amendments specified in H.R. 2257 would become effective on the date the Secretary of Agriculture issues the amendment, without being subject to a referendum. The bill also fails to provide for importer participation in referenda conducted under sections 314 and 315 of the Act.

The Department has traditionally supported producer self-help initiatives designed to improve their position in the marketplace. However, the Department strongly believes that such programs or major amendments thereto, such as proposed in H.R. 2257 for elimination of refunds and assessment of imports, should be subject to an upfront referendum. In the alternative, a delayed referendum which allows for refunds of assessments prior to the referendum is

Honorable E (Kika) de la Garza

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acceptable. Either direct refunds on a monthly basis (as is provided for in most programs of this type) or a provision for escrowing funds to make a one-time refund could be employed. If the escrowing alternative is utilized, the Department believes that a minimum of 10 percent of total assessments collected during the period prior to conduct of the referendum is a reasonable level for escrowing. Direct refund or provision for a one-time refund by escrowing have been previously included in the pork, beef, and egg programs.

Precedent has been established in the beef and pork programs to assess imports of such commodities or the equivalent thereof contained in imported products. H.R. 2257 provides for assessments on imported tablestock, frozen, processed or seed potatoes. Under the currently authorized potato research and promotion program, assessments on potatoes harvested in the United States are only on potatoes for food uses and seed potatoes. The Department encourages the Committee to examine closely the provision for assessment of imports of potatoes and potato products to assure comparable treatment to domestic and imported potatoes and potato products, and that the application of such assessments to imported potato products will not violate any existing international trade agreements. Specifically, attention should be given to the obligation under Article 401 of the United States-Canada Free-Trade Agreement not to introduce new customs duties and the broad definition of "customs duty" in Article 410.

If provision is included to assess imports of potatoes and potato products, the bill should be further modified to permit importers and domestic producers to participate in a referendum on the amended plan, as well as any future amendments to the plan. It is only reasonable that all groups (i.e., producers and importers) who are assessed under a program should be provided the opportunity to participate in the administration of the program and to vote in referenda.

The bill provides that any amendments to the plan issued pursuant to the amended Act shall become effective upon issuance. In order to comply with the Administrative Procedures Act and to provide an adequate opportunity to implement the new amendments, the bill should be amended to provide that such amendments shall become effective no earlier than 60 days after issuance.

U.S. potato production in the 48 contiguous States totaled 385.5 million hundredweight in 1987-88, and the 1988-89 crop is estimated at nearly 350.0 million hundredweight. Sales of 1987-88 crop potatoes, including food and seed, amounted to 348.2 million hundredweight, or 90 percent of the total crop. Data on utilization of the 1988-89 crop are not yet available because marketing of the fall crop is not completed.

U.S. imports of potatoes and potato products totaled 7.5 million hundredweight (fresh weight equivalent) in the 1987-88 crop year (October through September). Imports of table and seed potatoes, which are from Canada exclusively, totaled 4.8 million hundredweight, and imports of frozen potato products, mostly from Canada, totaled 2.2 million hundredweight on a fresh weight equivalent basis. Dehydrated potato and potato flour imports totaled

Honorable E (Kika) de la Garza

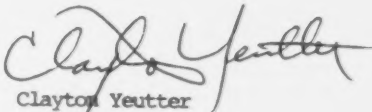
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0.5 million hundredweight in 1987-88. U.S. imports of dehydrated potato products are primarily from Canada (90 percent in 1987-88), although a range of other countries share in the total. These include, in order of importance, The Netherlands, The United Kingdom, The Republic of China, Peru, and Taiwan.

Amending the Potato Research and Promotion Act to assess imports of potatoes and potato products used for food or seed would result in revenue of about \$151,500 per year, based on imports during 1987-88. Revenue would be expected to increase at about the same rate as the U.S. market for potatoes; that is, approximately one-half percent per year. Increased revenue to the Board, due to the addition of Alaska and Hawaii, is expected to be less than \$5,000 per year. Refunds under the current program are running at a level of approximately 19 percent of total assessments collected. Elimination of the refund provision would increase revenue on domestic assessments by an estimated \$1.0 million, based on the 1988 level of refunds. If enacted, the revised program would be expected to generate annual revenue of about \$5.9 million compared to the net assessment level of \$4.6 million under the current program. Estimated costs to be reimbursed to the Department for conduct of the referendum is \$20,000.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,


Clayton Yeutter
Secretary

PECAN PROMOTION AND RESEARCH ACT OF 1989

WEDNESDAY, OCTOBER 4, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS, AND NUTRITION,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 1302, Longworth House Office Building, Hon. Charles Hatcher (chairman of the subcommittee) presiding.

Present: Representative Emerson.

Also present: Representative E (Kika) de la Garza, chairman of the committee.

Staff present: Daniel E. Brinza, counsel; Fred J. Clark, associate counsel; Alice Divine, minority associate counsel; Glenda L. Temple, clerk; Julia M. Paradis, Dean Mitchell, and Lynn Gallagher.

OPENING STATEMENT OF HON. CHARLES HATCHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. HATCHER. The hearing will come to order. Good morning. I would like to welcome all of you to this hearing on H.R. 3387, the Pecan Promotion and Research Act of 1989. I am pleased that 23 of my colleagues have joined me in introducing this legislation.

I have a strong interest in encouraging growth in the pecan industry because approximately one-third of all the pecans grown in the United States are produced in the Second Congressional District of Georgia, which I have the privilege to represent.

This bill is designed to strengthen the position of the pecan industry in the marketplace and to maintain and expand foreign and domestic markets. It is also intended to develop and promote expanded uses for improved and native pecans and pecan products.

The program will be implemented through the establishment of the Pecan Marketing Board, made up of at least 15 members who represent growers, shellers, handlers, importers, and the general public. Funding under the bill will be provided through assessments on all pecans produced in the United States and on all pecans imported into this country.

The growers and shellers seem to be united in support of this bill, with a few exceptions, and I feel that this program will help them offset high production costs and low income that has threatened their livelihood for the past few years.

[H.R. 3387 appears at the conclusion of the hearing.]

Mr. HATCHER. At this time, I would call on the ranking minority member, Mr. Emerson, for any comments he may have.

**OPENING STATEMENT OF HON. BILL EMERSON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI**

Mr. EMERSON. Thank you, Mr. Chairman. Today's hearing continues the process of our scheduled hearings for research and promotion programs for various commodities. As I have said in the past, these are programs that I do wholeheartedly support. They are a means by which producers can join together to promote their products, provide nutritional information to consumers, and to support research efforts.

Over the past 30 years, Congress has approved several research and promotion programs designed and implemented by the producers themselves. These programs provide producers with the structure to establish and to fund programs designed to promote research, sales, and consumption of their products.

I support these types of research and promotion programs and believe that they are a means for producers in the United States to not only promote their products, but also to fund research programs designed to increase use of the various products and to advise consumers of the benefits of the products.

Today, our hearing is on a bill introduced by our subcommittee chairman to provide for the establishment of a coordinated program of promotion and research designed to strengthen the position of the pecan industry in the marketplace. In addition, the chairman's bill aims to maintain and expand foreign and domestic markets for pecans and pecan products.

In the past, other producers of commodities have implemented research and promotion programs. Such types of commodities include beef, cotton, and dairy. Other commodities seeking to establish these programs are soybeans, limes, and mushrooms.

I am pleased that the subcommittee will have an opportunity to hear from our witnesses here today and from the representatives of the pecan industry and others interested in this subject, and I thank you, Mr. Chairman, for having this hearing.

Mr. HATCHER. Thank you, sir.

We have four witnesses today. The first is representing the U.S. Department of Agriculture, Mr. Daniel D. Haley, who is the Administrator of the Agricultural Marketing Service.

Thank you for being here. You have some folks with you, if you will introduce them for the record.

STATEMENT OF DANIEL D. HALEY, ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY KENNETH C. CLAYTON, DEPUTY ADMINISTRATOR, MARKETING PROGRAMS, AND ROBERT KEENEY, DEPUTY DIRECTOR, FRUIT AND VEGETABLE DIVISION

Mr. HALEY. I certainly will. Mr. Chairman and members, my name is Dan Haley, as you said, the new Administrator of the Agricultural Marketing Service. With me today is Ken Clayton, the

Deputy Administrator, Commodity Programs, and Bob Keeney, the Deputy Director of the Fruit and Vegetable Division.

Let me say from the outset that the Department has no objection at all to the enactment of this bill. We do, however, have some concerns; in fact, there are two of them. One of them which I have shared with members of the committee is the optional special State assessment to be collected by the pecan board, once established, to be utilized for research conducted pursuant to State law. I will talk a little bit about that in the testimony as I continue.

Another one—in review of the legislation last night, we became aware of the inclusion of pecan products in the import-assessment provision. We have shared our concern with the industry about that, in that we don't have data to convert and/or administer that particular provision. We have shared that with them today, and I think we will be able to work that out as we move this bill along. I wanted to raise it merely for the record, Mr. Chairman.

I am not going to read the statement that we have submitted to the committee. The scope, you already are well aware of, but the next important issue is really what components should be included in these programs.

It is the Department's position that when research, promotion, and education programs are enacted by Congress, the long-term best interests of the industry and the general public are best served when legislation contains certain components, and I have outlined them in our written statement, but I would like to highlight just a few of them for you.

One of them is that it be national in scope, that the collective efforts of the entire industry be involved; that there be a referendum either up front or delayed to show producer approval—very important; and in the import assessment provisions, where they exist, that we treat our trading partners equitably; second to last, the clear prohibition of the use of checkoff funds for lobbying purposes; and then last, and of a parochial view, that the Department get fully reimbursed for any funds used in the beginning of these programs and the referendum, the administration, so to speak.

Let me say right now, Mr. Chairman, the bill encompasses for the most part these legislative guidelines that I have just outlined, and I would like to take a moment and just explain what the bill itself does.

If enacted, the legislation would require the Secretary to publish 60 days after receipt of a proposal for a pecan promotion and research order a proposed order which would enable domestic growers, handlers, shellers, and importers of pecans to develop, finance, and carry out a nationally coordinated Pecan Research and Promotion Program.

The order would become effective not later than 120 days following publication, and with respect to that 120-day timeframe, we would urge and/or strongly recommend that the committee increase that to 180 days; that is, again, from an administrative point of view as we expect to have five or six of these within our agency and we just think that leeway would be of help. We will get it done as soon as we can, and hopefully before the 180 days, but we would hope that we could change that minor part.

The program would be administered by a 15-member board, Pecan Marketing Board, composed of eight growers, four shellers, one handler, one importer, one public representative, and, at the option of the board, one nonvoting consultant or adviser representing a country other than the United States.

After 2 years, the board is expected to generate up to \$6 million per year, based on a maximum assessment of 2 cents per pound of in-shell pecans, or the equivalent, as specified in the bill.

Additionally, the bill provides for an optional one-quarter cent special State assessment which may be remitted to the board for the purpose of utilizing such funds by the State board for research projects to promote pecans conducted pursuant to State law.

This is the issue which I discussed earlier. We do not believe—and this is the position we hold in this regard—we do not believe that commodity boards operating under Federal law should serve as collection agents for programs conducted pursuant to State law.

Not only does this establish an undesirable precedent—currently, I believe there is one State involved in this; there are potentially 12 States that could be involved under this order, let alone all the other research and promotion orders that we administer—but it also raises the question of fiscal accountability and enforcement, and is a matter which we should examine closely and should be closely examined by the committee. I would be happy to answer some questions about that when I conclude.

As to the referendum, the bill contains the provision for a delayed referendum to be conducted no later than 2 years after the effective date of the act. Approval of the program would require a majority of growers, grower-shellers, and importers voting in the referendum.

And a provision is made for the placement of funds in an escrow account equal to 10 percent of the total assessments collected during the period between the issuance of the order and the conduct of the referendum, and a pro rata payment of those refunds if the program is not approved. If the referendum is approved, which we expect, all funds in the escrow account would be returned to the pecan board and no refunds shall be paid.

We give you in my statement an overview of the pecan industry as far as imports and exports, but let me just say lastly that reimbursements to the Department for the start-up costs to implement the pecan plan are projected at \$45,000. Thereafter, estimated annual reimbursements to the Department for administration of the program are projected at \$45,000 to \$50,000.

Reimbursements to the Department to conduct the delayed referendum, which will be conducted by the Agricultural Stabilization and Conservation Service, are estimated at \$75,000.

Mr. Chairman, that concludes the summary of my statement and my associates and I would be happy to answer any questions you may have regarding our testimony.

[The prepared statement of Mr. Haley appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you, Mr. Haley. Concerning your concern about the quarter-cent assessment that could go to a State board, do we have any provision similar to that under any existing marketing order?

Mr. HALEY. To my knowledge, we do not.

Mr. HATCHER. So your concern is just that it is not appropriate for a program like this to be involved in collecting and sending to the State, is that right?

Mr. HALEY. Let me say that we understand why it was proposed. Clearly, if you are an industry member and you are making State payments and you are making Federal payments, it would be a lot easier to make that payment to one party and have the Government figure out who gets what, understanding that.

But, by the same token, from our perspective, there are a lot of questions which aren't answered. Some of those questions are in the event that these are voluntary assessments. If they are not paid, are we obligated to enforce the payment of those assessments? If they are paid, when do we remit to the State? Do we hold it for a period of time? If we do hold it, do we have to invest that money? If we do invest that money, under what circumstances do we have that? Do we have a fiduciary duty? There are a lot of unanswered questions and, quite frankly, we just think it is a bad precedent to get involved with the State programs.

Mr. HATCHER. Have you discussed that with any of the growers that are promoting this bill?

Mr. HALEY. I believe that we have made that clear to the grower representatives who are in support of it.

Mr. HATCHER. What about the pecan products import fee that you just recently decided might be difficult to implement? You said you think that can be worked out. How is that?

Mr. HALEY. I think it could be worked out, Mr. Chairman, because I think that the industry is willing to capitulate on the issue, and let me just take a second to say why.

It is not so much a policy question that we have in that. It is that currently, to assess pecan products, we don't have any data base or any way of determining what part of the pecan product such as a pecan cookie or cake would be subject to the assessment. We just don't have that data on which to administer that provision, and I think the industry is aware of this—plus; we don't know if there are any trade implications that may come forward. We have made those concerns known to the industry and I think they understand them and we will work that provision out.

Mr. HATCHER. I am familiar, of course, with your interest in having the prohibition on the use of assessment funds to influence legislation or governmental policy or action, except in recommending to the Secretary amendments to the order. That has been your position for some time.

Mr. HALEY. That is correct.

Mr. HATCHER. This is a little out of order, perhaps, but I have had a good bit of interest expressed from pork producers in Georgia. Have you had any success, or have they had any success in dealing with you about loosening up the use of the money?

Mr. HALEY. This is a very timely question, Mr. Chairman, and I have had quite a bit of discussion with the pork producers. They were in over the last several weeks, and many Members of Congress, including yourself and Mr. Emerson, have asked that question.

I don't think we have come to any understanding with them, but I think we understand the issue, and the issue is not whether they come to the Department and come forward with their concerns about food safety, about issues important to the industry. We want that.

The question is whether it is appropriate to use checkoff funds for that purpose, and it is a very fine line to be drawn and I think we differ where to draw it. But I believe where we have interpreted it to date is in the long-term best interests of the industry and the integrity of these programs overall, if that is an answer to your question.

Mr. HATCHER. Are they satisfied?

Mr. HALEY. I do not believe at this point in time they are satisfied.

Mr. HATCHER. I would urge you to continue to talk with them and let us see if we can't strike a balance that would meet their interests without offending the position of the Department or the interests of the Department.

Mr. HALEY. I will commit to do that, Mr. Chairman.

Mr. HATCHER. Thank you.

Mr. Emerson.

Mr. EMERSON. Thank you, Mr. Chairman. Mr. Haley, welcome to the subcommittee. We are glad to have you here. You have done a fine job in your first appearance here with us today; so good, in fact, that I think you have anticipated all of my questions.

But let us move back to this optional State-assessment issue for just a minute. Are there any circumstances under which you feel that this provision can be accommodated? I mean, we are obviously, in the markup, going to have to do something. Is there any way that you feel that this thing could be worked out?

Mr. HALEY. Well, quite frankly, I have given that a lot of thought in the last several days, coming up here, because I think it is possible to craft language that would do that, and I can kind of play it out for you.

If we had some kind of report language that would say that the Department does not have a fiduciary duty for those funds, they do not have to enforce them—if they are voluntarily giving them to us, then we don't have any responsibility to enforce the collection of such funds.

If the funds are forthwith and we don't have any duty to invest them while they are in our custody, if our only duty is to collect and remit immediately to some kind of State fund without any strings attached, without any accountability, clearly I don't think that there is a problem.

But I think handling the types of money that we are talking about—those things aren't easily done. And looking at the long-run interests of all the programs that could potentially be involved in this and the other States that could come on board with State programs, I just think overall it is a bad precedent, and therein lies our position.

Mr. EMERSON. We will look forward to working with you to see that we can devise some language that would meet your concerns.

Does the Department have any indication that the pecan industry is not united behind this bill? How about importers? I under-

stand most imports are from Mexico. Has there been any expression of concern there? Is there any opposition to this bill from importers?

Mr. HALEY. Well, I am aware of any vocal opposition to the pecan order. I believe there is consensus in the industry. When we are dealing with the imports, 95 percent of those come from Mexico. To date, I have not heard of any major vocal opposition, so I don't expect any.

I think, quite frankly, we might if we get involved in pecan products coming through. But, again, I think that is going to be worked out.

Mr. EMERSON. Thank you.

Mr. HATCHER. Mr. Haley, I appreciate your being here today. I might tell you that two of the witnesses today who will be testifying are from Albany, Georgia, which is my hometown as well, and Haley Farms is a big pecan producer there. So you might keep that in mind.

Mr. HALEY. I bet they are real good.

Mr. HATCHER. They are. Thank you all for being here.

Mr. HALEY. Thank you very much.

Mr. HATCHER. Next, we have a panel: Mr. Bucky Geer, who is vice president of Federated Pecan Growers, from Albany, Georgia, and Mr. Errol Dietze, president, Texas Pecan Growers, from Cuero, Texas.

If you gentlemen will come up, we will hear from you in the order in which I called your names. I would like to welcome you and thank you for making the effort to be here today to testify regarding this proposed marketing order.

Bucky and Mr. Dietze, we will be glad to hear from you in any way you feel most comfortable proceeding. You can read all or a portion of your statement, or you can just talk to us. We have read your statement and you can do it however you would like to.

Bucky.

STATEMENT OF BUCKY GEER, VICE PRESIDENT, FEDERATED PECAN GROWERS ASSOCIATION

Mr. GEER. Thank you, Mr. Chairman, members of the committee. I think I would like to read over this statement rather briefly, quickly, to stress a few points in my text here.

I am a pecan grower, have been one all of my life. I do it solely for a living. Mr. Chairman, we need legislation for promotion and research in our pecan industry. Our industry is stagnant and sick at this time because we have a slight surplus and no unified industry marketing plan.

Pecans are a native American tree. They have been in production since the early 1900's. From that time until the present time, the marketplace has been able to economically take the production at hand, and the farmers in the pecan industry have been able to be profitable.

At this time, we have new plantings coming in throughout the United States, and in addition to that, from old Mexico. These plantings are coming in at such a large rate, they are putting addi-

tional down pressure on our pecan prices because of the additional tonnage.

It has put a hardship on the pecan industry, both growers and shellers alike trying to assimilate this new production as rapidly as it comes on the market. It has put a lot of processors, who are the pecan shellers—several of them have gone out of business because of this situation, as well as pecan growers who haven't been able to survive with the low pecan prices that we have started to have the last few years.

I want to quote from the "USDA Fruit and Tree Nuts", Situation and Outlook Yearbook, 1988.

Despite record supplies of most tree nuts, prices received by growers last year were generally very good except for pecans. Both domestic and export shipments of most tree nuts showed strong gains, leaving ending stocks near normal. Value records were set for all tree nut crops except pecans and pistachios. The total value of production for the six domestic tree nut crops also reached a record \$1.09 billion in 1987, up 12 percent from 1986 and 39 percent from 1985.

Tree nut consumption in aggregate, although relatively low compared with other commodities, continued to climb. U.S. per capita consumption of all tree nuts rose 22 percent, from an annual average of 1.88 pounds to 2.30 pounds, during 1970-72 and 1985-87. Per capita almond consumption has shown strong growth, with an increased share of total tree nut consumption.

Walnut per capita consumption has also grown and widened its market share of total tree nut consumption. In contrast, the pecan market share of the total U.S. per capita consumption has fallen, even though pecan per capita consumption has made moderate absolute growth.

To give you an idea, the pecan industry is an industry that has made great strides the last 10 or 15 years in its horticultural and production practices, but we have lagged in market research and development. To give you an example of that, 57 percent of the U.S. almond crop and 30 percent of the walnut crop is exported, while only 2 percent of the U.S. pecan crop is exported.

Credit for this market development should be given to the amount of money invested in promotion and market development. Walnuts have yearly invested \$10 million in promotion and development, and almonds presently invest \$15 million per year in market promotion and development.

We feel like the time and need for a pecan marketing plan is immediate. Our industry feels that with passage of this marketing bill, the pecan industry can regain its market share and restore itself to better financial health.

At this time, the entire pecan industry is unified in its need and support of such a plan. Each State and regional pecan association has examined and given their unanimous endorsement and support to this bill. The National Pecan Shelling Association has studied, approved, and given their support to this bill.

On behalf of the entire pecan industry, I want to thank you, Mr. Chairman and members of this committee, for your consideration of this bill. If there are any questions, I would be glad to answer them.

[The prepared statement of Mr. Geer appears at the conclusion of the hearing.]

Mr. HATCHER. Thank you. We will reserve questions until after we have heard from Mr. Dietze.

STATEMENT OF ERROL JOHN DIETZE, PRESIDENT, TEXAS PECAN
GROWERS ASSOCIATION

Mr. DIETZE. Mr. Chairman, thank you. I am president of the Texas Pecan Growers Association, and we represent approximately 1,000 growers and very enthusiastically endorse the proposed Pecan Promotion and Research Act. We feel like it is inevitable after the last 5 or 6 years that something needs to be done with our industry.

Never in the history of our industry has the need for the promotion of our product been more evident, nor has our industry ever been united in the pursuit of a marketing plan. I heard you earlier ask questions about whether or not we felt like the people were behind this proposal, and I can assure this panel and this committee that we have scrutinized this and looked into it in great detail. We had a lot of ups and downs back in July about this, and feel like that everyone is very much in favor of this plan.

Texas ranks second in U.S. pecan production, and last year we produced 60 million pounds, one-fifth of the country's total pecan crop. Naturally, Texas growers, along with all other pecan growers in the country, have watched the U.S. pecan supply increase during the recent years.

Consumption has not kept pace and, as a result, the industry has seen pecan prices drop significantly, with catastrophic results for many growers and shellers. In addition, Mexican pecan production is increasing as many of its young orchards mature, and it has been estimated that Mexico could further inflate our supply by exporting up to 100 million pounds.

Mr. Fred Vashir and myself were in Mexico last year and witnessed this ourselves, and toured the orchards and became very concerned about the United States production based upon what we saw in Mexico.

Taste preference tests have shown that the consumer chooses pecans as their favorite or second favorite nut 90 percent of the time. Additionally, pecans have healthy attributes that we should be capitalizing on. For example, they are high in protein and have no cholesterol, which is a major concern in your committee and various hearings that you have.

Armed with this knowledge and the fact that tree nut consumption reached a record of 2.5 pounds per capita in 1988, we feel that the potential for increasing domestic consumption in pecans is great. We need to educate the consumer, particularly in areas other than the South, on the attributes and the versatility of the pecan as a delicious, healthy food suitable for year-around use.

In addition to the domestic market, export markets offer tremendous potential to pecans and have virtually been untapped by the pecan industry thus far. Less than 3 percent of the pecan crop is currently being exported. In contrast with other nut commodities such as almonds and walnuts, they have spent millions of dollars in pursuit of export markets. And as a result, almond growers now export over 50 percent of their annual production, while the walnut industry likewise exports 25 percent.

Unfortunately, up until now the pecan industry has failed to agree on a course of action to fund a marketing program. While we

founded in our marketing attempts, other nut organizations have channeled millions of dollars in their respective programs and have reaped handsome results. For example, almond and walnut growers are now annually spending \$15 million and \$10 million, respectively, on market promotion and development.

Leaders in our industry have studied those programs and are convinced that all facets of the pecan industry must cooperate to fund its own marketing plan. The alternative, continuing on our present course, represents a very bleak future.

The plan before you today makes provisions for a one-half-cent-per-pound assessment on pecan growers. By their support of this plan, the growers have indicated that they are willing to impose this assessment on themselves, which I think is extremely important that they have acknowledged this. They believe this plan is a step in the right direction.

Although the amount of the funding generated by the plan will not be great when compared to that of our competitors, it will represent the most significant effort put forth yet by the pecan industry, and will open many doors to our product, of which we are very proud.

The pecan is one of our native nuts, and it has been documented as a valuable food source as far back as 1530 when the Indians reportedly made annual journeys to the river banks of Texas.

In 1987 and again in 1988, the average price per pound paid to the U.S. pecan grower was lower than it has been since 1976. The costs of producing those pecans have not gone down. With supplies increasing and returns to the growers decreasing, the pecan industry is headed toward complete disaster unless we do something to help ourselves. I believe, and the Texas pecan growers, and I think all the pecan producers in the United States believe that this plan is urgent.

We thank you very much for giving us the opportunity to be here today.

[The prepared statement of Mr. Dietze appears at the conclusion of the hearing.]

Mr. HATCHER. Well, thank you for being here and thank you for your testimony.

Bucky, is there any significant grower opposition to any portion of the proposal?

Mr. GEER. No, sir, we have no opposition at all within the growing industry or the processing industry at this time. This plan has been worked on for the last 18 months. The conception of it was formed originally in Georgia through grower groups, grower inputs.

From that, it developed. Later on, 6 or 8 months down the line, we enlisted the help and aid of the processing industry to work with us in formulating this plan. No, sir, we have no opposition.

Mr. HATCHER. Well, you remember in the early 1980's there was a good bit of opposition from some growers, not significant numbers, but some opposition, and there was conflict between the various elements of the industry. That has been resolved?

Mr. GEER. That has been resolved and those elements that were in opposition to a bill at that time are in complete support of this present bill we have here. I might add that the opposition from the shelling industry at that time—the very individual that led the op-

position at this time made the motion at the National Pecan Shelling convention, I believe, in February of this year that the shelling industry support this bill, and it was voted on and the entire board unanimously approved this bill.

Mr. HATCHER. Well, the only dissension that I have heard—and I think this has been relayed to you by someone on my staff—is from a grower in our area of southwest Georgia about the implementation time, that we should have the referendum first. Is it your opinion that that is a very isolated view?

Mr. GEER. That particular individual is a neighbor of mine, a very nonprogressive person that can't see any further than his nose, and I take issue with him on most anything. [Laughter.]

I am very glad to have him as an adversary. I feel sorry that this individual can't foresee the good that market promotion and development does not only in pecans, but in any industry or business you have today. It is a vital part of it.

Mr. HATCHER. But you don't see that as being the view of any significant number of growers in our area or anywhere else?

Mr. GEER. No, sir. He represents less than one-half of 1 percent.

Mr. HATCHER. Well, thank you very much.

Mr. Dietze, most of our pecan imports come through Texas, I guess, from Mexico, is that correct?

Mr. DIETZE. That is my understanding, yes, Mr. Chairman.

Mr. HATCHER. Do we have a lot of different importers of pecans down in Texas? How does that work? Are they mostly American companies that import the pecans from Mexico and then market them, or how does that work?

Mr. DIETZE. I don't know that I understand your question. I didn't hear—

Mr. HATCHER. OK. Pecans come in from Mexico.

Mr. DIETZE. Yes.

Mr. HATCHER. How do they get to the consumer in this country? Do they come across the border—

Mr. DIETZE. Yes.

Mr. HATCHER. And are bought by some American individual or company, or what?

Mr. DIETZE. That is correct. There are a number of shellers there in Texas, and then in other places, also, that will purchase these pecans and bring them in.

Mr. HATCHER. Right. Has any concern been expressed from the Mexican producers or the people who sell the Mexican pecans in Texas about this legislation?

Mr. DIETZE. Not that I am aware of. We have discussed it with some of them when we were over there, but to my knowledge, there is no opposition that I know of.

Mr. HATCHER. Bucky.

Mr. GEER. Yes, sir, that question has been addressed. The Mexican pecan producers or shellers do have a representative that comes to the National Pecan Shellers meeting. And at various grower meetings, the Mexicans come over into the Texas meeting. I have sat many times with them. They are very interested to do anything to support the pecan market. They are more than willing to do their share. They understand that market development and

promotion needs to be done. They have expressed no opposition at all, sir.

Mr. HATCHER. Well, your figures about the other nut crops and the percentage of them that is exported, and only 2 percent of pecans, is very striking testimony. There seems to be no other factor to account for that except for the failure to promote, is that—

Mr. GEER. That is absolutely correct, sir.

Mr. DIETZE. That is the whole thing.

Mr. HATCHER. Right.

Mr. Emerson.

Mr. EMERSON. I don't have any questions, Mr. Chairman. I think you have given us some outstanding testimony here and made a very strong case for this bill. I am glad to hear you doing it because our experience has been that commodities that have programs of the sort that you are asking for have a very positive experience. I would like to see the pecan industry have the same opportunity. I look forward to working with you.

Mr. DIETZE. Thank you very much.

Mr. HATCHER. Bucky.

Mr. GEER. Yes, sir. I would like to address two issues that the USDA brought up and possibly clarify our position on those issues. As far as the assessment on individual State levels, the pecan industry is a unique industry in that it is scattered from the Atlantic to the Pacific in cluster groups.

Because of that geographical area, we have different situations in different States that address themselves, such as cultural practices. In the Southeast, we have heavy rainfall; we have a high disease problem. In the Midwest, they have just the opposite; they don't have that. Particular issues sometimes arise on a State basis that require addressing.

This assessment on a State level was put in so that that assessment could be collected on that State level and charged against the producers in that State rather than coming to the Federal Government and asking everybody in the pecan industry to share that expense, whereas in some parts of the country they may not have that problem and may not want to share in the expense in research on that problem. That is the reason the particular State assessment clause was put in.

Also, the desire that we asked USDA was not to invest the money or manage the money, strictly to collect that in their collection process to report and remit that money. That was the extent of obligation that we were asking from USDA, no other obligations beyond that.

Another issue that addressed itself was the assessment on pecan products. At this time, we don't care to—well, at no time do we care to assess any pecan products, strictly the in-shell pecan and the shelled pecan meat are what we are speaking to put assessment on, not any pecan products. As we all know, that could lead to quite a bit of paperwork on breaking down various pecan products such as candies which would have a slight pecan content in it.

No, sir. Even though it was included in this House bill, it was inadvertently done, the pecan product assessment, and it should be removed. Thank you.

Mr. HATCHER. Well, thank you very much. Thank you both.

Mr. DIETZE. Thank you.

Mr. HATCHER. Our last witness is Mr. J.W. Christiansen, Jr., vice president of Nut Tree Pecan Company in Albany, Georgia, and he will be testifying on behalf of the National Pecan Shellers Association. We welcome you, Mr. Christiansen, and thank you for being here.

STATEMENT OF J.W. CHRISTIANSEN, JR., MEMBER, BOARD OF DIRECTORS, NATIONAL PECAN SHELLERS ASSOCIATION

Mr. CHRISTIANSEN. Well, thank you, Mr. Chairman and members of the committee. Today, I am representing the National Pecan Shellers Association, of which I am a member of the board of directors. The association's membership represents more than 85 percent of the productive capacity of the domestic shelling industry. Our membership is also made up of some leading Mexican producers as well.

I think what I would like to do is, if I may, spend a few minutes and just sort of summarize the written statement that you have. First, the National Pecan Shellers Association definitely supports the Pecan Promotion and Research Act. We believe that this program will benefit both the growers and the shellers, and that beyond the obvious benefit of increasing consumption, there are two areas that we feel like that it could be of additional benefit.

One area is in the research area of production. We feel like that in the changing times of agriculture and the production techniques that a certain percentage, a representative percentage of the assessment should be earmarked for research in pecan production, this geared along the lines of improving the quality of the product that is produced, as well as maintaining the production costs at a level where the growers can remain in business.

The second area that we have a concern and we feel that the program could be of benefit is in an area of data sharing. The industry has had a problem, has been handicapped by a lack of accurate production and consumption data, and we believe that by sharing the information accumulated by this program with the USDA that this could benefit in getting more accurate production figures and more accurate consumption figures into the hands of the industry.

Finally, we believe that the act has the potential to bring together the pecan growers and shellers in a joint effort that can strengthen both sectors of the industry.

Mr. Chairman, I will be glad to try to answer any questions that you might have at this time.

[The prepared statement of Mr. Christiansen appears at the conclusion of the hearing.]

Mr. HATCHER. Do you share the view expressed by the grower representatives that the fact that we haven't had this kind of investment is why we are exporting such a large percentage of some other nut crops and such a low percentage of our pecan crop?

Mr. CHRISTIANSEN. Yes, sir, definitely, I do, and I make that response not only as a representative for the Shellers Association but as a grower myself. The pecan industry is an industry that has

been very fragmented in the past and has never really had a unified effort in promoting the product that they produce.

Mr. HATCHER. We are really about a decade behind, probably, aren't we, at least, in this effort?

Mr. CHRISTIANSEN. I don't know of a single commodity that doesn't have a unified program to promote their particular product other than the pecan industry.

Mr. HATCHER. Mr. Emerson.

Mr. EMERSON. No questions, Mr. Chairman. Thank you.

Mr. HATCHER. Well, thank you, Mr. Christiansen, and thank all of you again for being here today. Before we adjourn, Chairman de la Garza, do you have any comments you would like to make about this pecan marketing proposal?

The CHAIRMAN. Thank you very much, Chairman Hatcher. Only to say that I support the program. I think it would be worthwhile. I might mention that I just saw a periodical. It is a Japanese—well, it is about Japan and it had an article about, I think it was some ladies selling pecans in Japan, and they polished them to make them look real good.

I am sure they were good U.S. pecans anyway, but this was a major sale, or a beginning of an impact on the Japanese market. I think this is worthwhile, and certainly we need to do everything that we can to promote.

I heard—and let me ask you, if I could please—that there was some concern about imports. There was concern about imports from several countries, and I will just mention specifically Mexico. Is that a problem? Is that a verifiable problem? Do you have any information on that?

Mr. CHRISTIANSEN. I think it is beginning to become a problem, and in my estimation I believe that it will become more of a problem as production increases in Mexico. It is reported that this year they expect to make some 65 to 70 million pounds of in-shell pecans.

From visiting that country, I believe that within the next 5 to 7 years their production will be in the range of 100 million pounds. Because of their economy, a lot of that production is going to be moved into the United States, and without some promotion to acquaint people with pecans that we produce here domestically, any increased tonnage coming in on that market will definitely be of a detriment.

The CHAIRMAN. Are these shelled pecans or unshelled?

Mr. CHRISTIANSEN. Most of them are unshelled; most of them come into this country in the shell. Another concern that I have concerning imports is the use of pesticide products in those countries, and particularly in Mexico, that are banned here in the United States.

It concerns me from two areas; one, that we possibly consume some products that we already know we should not be consuming; the other from the standpoint of our growers that are put at a disadvantage because some of the products that are economical to use and do a good job controlling some of the most difficult to control insects are banned here in the States, but are used in countries like Mexico. And I feel like that at some point it is going to be very important to address that subject.

The CHAIRMAN. Do you have verifiable information on that—names of what products?

Mr. CHRISTIANSEN. Not with me, but I believe that such information can be gathered.

The CHAIRMAN. If you could submit that information for the record, it would be appreciated.

Mr. CHRISTIANSEN. All right, sir.

The CHAIRMAN. Because we need to look at all those areas. We are working in that area. The upper end of my district has pecans. I hope you are not going to object to pecans from Texas.

Mr. CHRISTIANSEN. No, sir, definitely not.

The CHAIRMAN. I think a couple of the partnerships down there—half of the partnership is from Georgia and they have teamed up with some Texans and are working together.

But, Mr. Chairman, I appreciate it. I think you are on the right track, and certainly we will do everything we can to help this endeavor.

Mr. HATCHER. Thank you, Mr. Chairman. And the record will remain open for you to submit some data regarding the use of pesticides, if possible.

Mr. CHRISTIANSEN. Thank you. I will certainly try to provide something.

Mr. HATCHER. Well, again, thank all of you for being here, and that concludes the hearing.

[Whereupon, at 10:19 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

Statement of Daniel D. Haley, Administrator
Agricultural Marketing Service, United States Department of Agriculture
before the Subcommittee on Domestic Marketing, Consumer
Relations, and Nutrition
House Committee on Agriculture

October 4, 1989

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear before your Committee to present the Department's views on the research and promotion proposal for pecans. Accompanying me today are Kenneth C. Clayton, Deputy Administrator for Marketing Programs, and Charles R. Brader, Director of the Fruit and Vegetable Division of AMS.

The Department has no objection to the enactment of this bill. We do, however, encourage the Committee to examine closely the provision for an optional special State assessment to be collected by the Pecan Board to be utilized for research conducted pursuant to State law.

Scope of Commodity Research and Promotion Programs

The Department currently oversees national commodity promotion and research programs for beef, cotton, dairy, eggs, honey, pork, potatoes, watermelons, and wool, lamb, and mohair. Authority exists for the floral and wheat industries as well, but programs are not currently in effect for those commodities. These national promotion programs, which focus on generic promotion and market development for their commodities, devote in excess of \$400 million a year to increase public and commercial awareness of their products. The Department has traditionally taken the position that we have no objection to industry self-help initiatives which are designed to help producers improve their position in the marketplace.

Legislative Guidelines for
Commodity Research and Promotion Programs

It is the Department's position that when research, promotion, and education programs are enacted by Congress, the long-run interests of the industry and general public are best served when such legislation contains the following features:

- national in scope representing the collective efforts of industry members nationwide;
- implemented through an upfront referendum by a majority of qualified persons voting;
- if implemented by delayed referendum, provision for refunds (either through direct monthly refunds or escrow) prior to issuance of the final order;
- opportunity for industry groups to reaffirm their support for these programs if requested by at least 10 percent of qualified persons;
- prompt refunds and confidentiality of refund information;
- appointment by the Secretary of board members from industry nominations;
- for programs that assess imports, provision for equitable treatment of domestic and imported commodities, importer representation on the boards and in referenda, and compliance with international trade agreements;
- prohibition on the use of assessment funds for false or misleading advertisement;
- prohibition on the use of assessment funds to influence legislation or governmental policy or action, except in recommending to the Secretary amendments to the order;

- 3 -

- direct enforcement authority by the Secretary, including the imposition of civil penalties and cease and desist authority;
- full reimbursement to the Department from date of petition for an order for costs incurred in administering the program, including startup costs, salaries of Department personnel, and the cost of conducting referenda;
- authority for the Secretary to suspend or terminate a program which the Secretary determines does not carry out the policy of the authorizing statute.

Provisions of the Proposed Pecan Research
and Promotion Act of 1989

Mr. Chairman, the bill encompasses for the most part the legislative guidelines which I have just outlined and which we believe are necessary for the effective administration and enforcement of commodity research and promotion programs. If enacted, this legislation would require the Secretary to publish 60-days after receipt of a proposal for a pecan promotion and research order, a proposed order which would enable domestic growers, handlers, shellers, and importers of pecans to develop, finance, and carry out a nationally coordinated pecan research and promotion program. The order would become effective not later than 120 days following publication. With respect to the 120-day timeframe, the Department strongly encourages the Committee to increase to 180 days the time period for the order to become effective.

The program would be administered by a 15-member Pecan Marketing Board composed of eight growers, four shellers, one handler, one importer, one public representative, and, at the option of the Board, one non-voting consultant or advisor representing a country other than the United States.

After 2 years, the board is expected to generate up to \$6 million per year based on a maximum assessment rate of \$.02 per pound of inshell pecans or the equivalent, as specified in the bill. Additionally, the bill provides for an optional one-quarter cent special State assessment which may be remitted to the Board for the purpose of utilizing such funds by the State Board for research projects to promote pecans conducted pursuant to State law. We do not believe that commodity boards operating under Federal law should serve as collection agents for programs conducted pursuant to State law. Not only does this establish an undesirable precedent, but it also raises questions of fiscal accountability and enforcement and is a matter which should be closely examined by the Committee.

The bill also contains a provision for a delayed referendum to be conducted no later than 2 years after the effective date of the Act. Approval of the program would require a majority of growers, grower-shellors and importers voting in the referendum. Provision is made for placement of funds in an escrow account, equal to 10 percent of the total assessments collected during the period between issuance of the order and conduct of the referendum, for pro rata payment of refunds if the program is not approved. If the referendum is approved, all funds in the escrow account will be returned to the Pecan Board and no refunds shall be paid. (Comparable provisions were included in the Egg Research and Consumer Information Act Amendments of 1988, Public Law 100-575.)

Overview of Pecan Industry

In the United States, pecans are produced primarily in the southeastern and southwestern States. The National Agricultural Statistics Service (NASS) publishes estimates of production, grower prices, and value of production for the leading 12 pecan producing States. These States are Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, and Texas. Total utilized production of pecans was 279 million inshell pounds in 1988, 262 million in 1987, and 273 million inshell pounds in 1986. Most pecans are sold shelled (only about 20 percent are sold inshell). Less than 5.0 percent of U.S. production goes to export markets, with Canada, Mexico, the United Kingdom, Germany, and the Netherlands being the major foreign markets for U.S. exports.

The major source of imported pecans is Mexico. Small amounts of pecans are sometimes imported from Australia. In calendar year 1988, Mexico accounted for all imported inshell pecans (about 12 million pounds, inshell) and about 99 percent of all shelled imports (about 6 million pounds, inshell equivalent). Imports are typically heaviest from September through December, but they are imported year-round. Imports vary considerably from year to year, but account for a relatively small share of U.S. supplies. In recent years, imports have been as high as 12 percent of domestic consumption, and as low as 1 percent. In 1988, imports represented about 10.5 percent of total U.S. consumption, up from 8.2 percent in 1987.

Departmental Oversight of Commodity
Promotion and Research Activities

The Department plays an active role in the oversight of federally-sanctioned commodity promotion and research programs to assure that they are administered by the boards in accordance with the authorizing legislation and order. Annual budgets and workplans of the boards are approved by the Secretary, and Department staff is in regular attendance at meetings of the boards. This ongoing and active oversight helps assure that industry-generated funds are expended for the purposes intended.

Reimbursements to the Department

Reimbursements to the Department for startup costs to implement the pecan plan are projected at \$45,000. Thereafter, estimated annual reimbursements to the Department for administration of the program are projected at \$45,000 to \$50,000. Reimbursements to the Department for conduct of the delayed referendum, which would be conducted by the Agricultural Stabilization and Conservation Service, is estimated at \$75,000.

Mr. Chairman, this concludes my statement. My associates and I will be glad to respond to any questions the Committee may have.

STATEMENT OF THE
 FEDERATED PECAN GROWERS OF THE UNITED STATES
 BY PECAN GROWER: BUCKY GEER, ALBANY GEORGIA
 BEFORE THE HOUSE AGRICULTURAL SUBCOMMITTEE
 ON DOMESTIC MARKETING, CONSUMER RELATIONS, AND NUTRITION

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address this committee. My name is Bucky Geer. I farm 2500 acres of pecans in and around Albany, Georgia. I have farmed pecans for the past twenty-five years. I am past president of the Georgia Pecan Growers Association and the Southeastern Pecan Growers Association.

Today, I speak as a representative of the Federated Pecan Growers Association. The Federated Pecan Growers Association represents all state and regional pecan associations in the sixteen pecan producing states.

Mr. Chairman, we need legislation to establish a nationwide program for promotion and research in the pecan industry. Our industry is stagnant and sick at this time because we have a slight surplus and no unified industry marketing plan.

Pecans are native American trees. Commercial pecan production started in the early 1900's along the Gulf Coast region. From that time until a few years ago, the industry had enough demand to orderly market U. S. pecan production at economically profitable prices. Within the past few years, additional poundage has been brought to the market from new domestic plantings and Mexican imports. The additional volume of these new pecans will continue to grow. Estimates of these new pecans have been put at about 100 million pounds. Current U. S. production averages 265 million pounds.

This new poundage has had a depressing effect on pecan prices because it was not accompanied with any additional marketing. Our industry is virtually profitless. Many pecan shellers and growers have gone broke and others are on a dangerous threshold.

"Despite record supplies of most tree nuts, prices received by growers last year were generally very good except for pecans. Both domestic and export shipments of most tree nuts showed strong gains, leaving ending stocks near normal. Value records were set for all tree nut crops except pecans and pistachios. The total value of production for the six domestic tree nut crops also reached a record \$1.09 billion in 1987, up 12 percent from 1986 and 39 percent from 1985.

Tree nut consumption in aggregate, although relative low compared with other commodities, continues to climb. U.S. per capita consumption of all tree nuts rose 22 percent, from an annual

average of 1.88 pounds to 2.30 pounds, during 1970-72--1985-87. Per capita almond consumption has shown strong growth, with an increased share of total tree nut consumption.

Walnut per capita consumption has also grown and widened its market share of total tree nut consumption. In contrast, the pecan market share of the total U.S. per capita consumption has fallen, even though pecan per capita consumption has made moderate absolute growth. Consumption of macadamias, pistachios, and filberts is small in relation to the other tree nuts but per capita consumption of all three nut crops is gradually increasing.*

Fifty-seven percent (57%) of the U.S. Almond crop and thirty percent (30%) of the walnut crop is exported, while only two percent (2%) of the U. S. Pecan crop is exported. Credit for this market development should be given to the amount invested in market promotion and development.

Walnuts	\$10,000,000
Almonds	\$15,000,000

The time and need for a pecan marketing plan is immediate. Our industry feels that with passage of this marketing Bill, the pecan industry can regain market share and restore itself to better financial health. At this time, the entire pecan industry is united in its need and support for such a plan.

Every state and regional pecan association has examined and given their unanimous support to this Bill. The National Pecan Shelling Association has studied, approved and given their support to this Bill.

On behalf of the entire pecan industry, thank you Mr. Chairman and members of the Committee for your consideration of this Bill. If there are any questions, I would be glad to discuss and answer them.

*Source: U.S.D.A. Fruit and Tree Nuts, Situation and Outlook Yearbook, August 1988.

STATEMENT OF THE
FEDERATED PECAN GROWERS OF THE UNITED STATES
BY PRESIDENT: ERROL JOHN DIETZE, TEXAS PECAN GROWERS ASSN.
BEFORE THE HOUSE AGRICULTURAL SUB-COMMITTEE ON
DOMESTIC MARKETING, CONSUMER RELATIONS, AND NUTRITION
OCTOBER 4, 1989

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to address this committee regarding House Bill S-962 the Proposed Pecan Promotion and Research Act of 1989. My name is Errol John Dietze and I am president of the Texas Pecan Growers Association which is the largest organization of pecan growers in the United States. Our association, representing approximately 1,000 growers, has enthusiastically endorsed the proposed plan you are considering today. In fact, all 11 of the state and regional pecan growers organizations in this country have endorsed the plan (list attached).

Never in the history of our industry has the need for promotion of our product been more evident -- nor has our industry ever been so united in pursuit of a marketing plan as it is now. We realize that we cannot sit back any longer and let the almond and walnut industries advertise and promote their way into markets that could just as easily be ours.

Texas ranks second in U.S. pecan production and last year we produced 60 million pounds, one-fifth of the country's total pecan crop. Texas growers, along with all other pecan growers in the country, have watched the U.S. pecan supply increase during recent years. Consumption has not kept pace and, as a result, the industry has seen pecan prices drop significantly with catastrophic results for many growers and shellers. In addition, Mexico's pecan production is increasing as many of its young orchards mature and it has been estimated that Mexico could further inflate our supply by exporting up to 100 million pounds annually to the United States within five years.

Taste preference tests have shown that consumers choose pecans as their favorite or second favorite nut 90 percent of the time. Additionally, pecans have many healthy attributes that we should be capitalizing on -- for example, they are high in protein and have no cholesterol. Armed with this knowledge and the fact that tree nut consumption reached a record 2.5 pounds per capita in 1988, we feel that the potential for increasing domestic consumption of pecans is great. We need to educate consumers, particularly in areas other than the South, on the attributes and versatility of the pecan as a delicious, healthy food suitable for year-round use.

In addition to the domestic market, export markets offer tremendous potential to pecans and have virtually been untapped by the pecan industry thus far--less than three percent of the pecan crop is

currently being exported. In contrast, other nut commodities such as almonds and walnuts have spent millions of dollars in pursuit of export markets and, as a result, almond growers now export over 50 percent of their annual production while the walnut industry likewise exports over 25 percent of its production annually. European nut consumption is far greater on a per-capita basis than in this country and we believe that pecans have great potential in that market as well as in Pacific markets.

Unfortunately, up until now, the pecan industry has failed to agree on a course of action to fund a marketing program. And, while we floundered in our marketing attempts, other nut organizations have channeled millions of dollars into their respective programs and have reaped handsome results. For example, almond and walnut growers are now annually spending \$15 million and \$10 million, respectively, on market promotion and development. Leaders in our industry have studied those programs and are convinced that all facets of the pecan industry must cooperate to fund its own marketing plan. The alternative, continuing on our present course, represents a very bleak future.

The plan before you today makes provisions for a one-half-cent-per-pound assessment on pecan growers. By their support of the plan, the growers have indicated that they are willing to impose this assessment on themselves. They believe that this plan is a step in the right direction. Although the amount of funding generated by the plan will not be great when compared to that of our competitors, it will represent the most significant effort put forth yet by the pecan industry and will open many doors to our product of which we are very proud. The pecan is one of our native nuts and has been documented as a valuable food source as far back as 1533 when Indians reportedly made annual journeys to the river banks of Texas to collect the nuts.

In 1987 and again in 1988, the average price per pound paid to the U.S. pecan grower was lower than it has been since 1976. The cost of producing those pecans has not gone down. With supplies increasing and returns to the grower decreasing, the pecan industry is headed toward complete disaster unless we do something to help ourselves. We believe this proposed plan to be vital to our survival.

Thank you

Regional and State Associations
in support of the
Proposed Pecan Promotion
& Research Act of 1989

Federated Pecan Growers of the United States
Alabama Pecan Growers Association
California Pecan Growers Association
Florida Pecan Growers Association
Georgia Pecan Growers Association
Louisiana Pecan Growers Association
Mississippi Pecan Growers Association
Oklahoma Pecan Growers Association
Southeastern Pecan Growers Association
Texas Pecan Growers Association
Western Pecan Growers Association

STATEMENT OF
J. W. CHRISTIANSEN, JR.
ON BEHALF OF THE
NATIONAL PECAN SHELLERS ASSOCIATION

BEFORE THE
U. S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON DOMESTIC MARKETING,
CONSUMER RELATIONS AND NUTRITION
OCTOBER 4, 1989

Mr. Chairman and members of the committee, I am J.W. Christiansen, Jr. of Nut Tree Pecan Company of Albany, Georgia. I am a member of the Board of Directors of the National Pecan Shellers Association (NPSA), and I'm representing them here today. The association's members represent more than 85 percent of the productive capacity of the domestic shelling industry. Leading Mexican producers hold membership within our association as well.

The NPSA supports the "Pecan Promotion and Research Act of 1989." We believe that both growers and shellers can benefit from a broadbased promotion and research activity designed to improve the quality, production and marketing of pecans. In addition, there are two areas wherein a marketing agreement can provide benefits to the industry beyond the obvious objective of increasing pecan consumption.

First, we believe it is particularly important that a representative amount of the funds realized from the assessments on pecans be earmarked for research on pecan production practices. American agriculture is functioning in an atmosphere of changing perceptions with respect to post World War II farming techniques. The agricultural practices

-2-

of the last half century are being challenged as no longer viable. The Pecan Promotion Act offers an opportunity to move our industry into the 21st century in harmony with consumer expectations. We should not let this opportunity pass.

Second, the industry presently is handicapped by the lack of accurate crop production and consumption data. The Act can be useful by providing annual pecan assessments data to the U.S.D.A.'s National Agricultural Statistics Service (NASS). These data will help fill in the gaps in those states where the Service has heretofore been proscribed from making production estimates available. The lack of accurate marketing information has put our industry at a competitive disadvantage with other tree nuts. We hope that when the House considers the marketing agreement legislation, the committee will indicate its clear intent to support our recommendations on data sharing and earmarking of funds for research.

Finally, we believe the Act has the potential to bring together pecan growers and shellers in a joint effort that can strengthen both sectors of the industry. Increased annual consumption of pecans is a common goal of both growers and shellers. A well-conceived, properly funded research and promotion program can help to achieve that goal. We look forward to its speedy passage and the benefits the Act will provide to the industry.

Mr. Chairman, that concludes my remarks. I would be happy to answer any questions the committee might have at this time.

LCD/sd 10/2/89

101ST CONGRESS
1ST SESSION

H. R. 3387

To provide for the establishment of a coordinated program of promotion and research designed to strengthen the position of the pecan industry in the marketplace, to maintain and expand foreign and domestic markets and uses for improved and native pecans and pecan products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 1989

Mr. HATCHER (for himself, Mr. FALCONE, Mr. TOWNS, Mr. DARDEN, Mr. STUMP, Mr. BARNARD, Mr. HORTON, Mr. GRANT, Mr. RAY, Mr. SKEEN, Mr. HUCKABY, Mr. JENKINS, Mr. SYNAR, Mr. ESPY, Mr. FAUNTROY, Mr. LEWIS of Florida, Mr. ROWLAND of Georgia, Mr. HARRIS, Mr. LANCASTER, Mr. TALLON, Mr. THOMAS of Georgia, Mr. LEWIS of Georgia, and Mr. HAYES of Louisiana) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To provide for the establishment of a coordinated program of promotion and research designed to strengthen the position of the pecan industry in the marketplace, to maintain and expand foreign and domestic markets and uses for improved and native pecans and pecan products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Pecan Promotion and Research Act of 1989”.

4 (b) TABLE OF CONTENTS.—The table of contents is as
5 follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and declaration of policy.
- Sec. 3. Definitions.
- Sec. 4. Issuance of orders.
- Sec. 5. Regulations.
- Sec. 6. Required terms in orders.
- Sec. 7. Permissive terms in orders.
- Sec. 8. Assessments.
- Sec. 9. Petition and review.
- Sec. 10. Enforcement.
- Sec. 11. Investigations and power to subpoena.
- Sec. 12. Requirement of referendum.
- Sec. 13. Suspension or termination of orders.
- Sec. 14. Amendments.
- Sec. 15. Authorization of appropriations.

6 SEC. 2. FINDINGS AND DECLARATION OF POLICY.

7 (a) FINDINGS.—Congress finds that—

8 (1) pecans are a native American nut that is an
9 important food, and is a valuable part of the human
10 diet;

11 (2) the production of pecans plays a significant
12 role in the economy of the United States in that pecans
13 are produced by thousands of pecan producers, shelled
14 and processed by numerous shellers and processors,
15 and pecan and pecan products produced in the United
16 States are consumed by millions of people throughout
17 the United States and foreign countries;

1 (3) pecans and pecan products must be high qual-
2 ity, readily available, handled properly, and marketed
3 efficiently to ensure that consumers have an adequate
4 supply of pecans and pecan products;

5 (4) the maintenance and expansion of existing
6 markets and development of new markets for pecans
7 and pecan products are vital to the welfare of pecan
8 producers and those concerned with marketing, using,
9 and producing pecans and pecan products, as well as to
10 the general economy of the United States, and neces-
11 sary to ensure the ready availability and efficient mar-
12 keting of pecans and pecan products;

13 (5) there exist established State organizations con-
14 ducting pecan promotion, research, and consumer edu-
15 cation programs that are invaluable to the efforts of
16 promoting the consumption of pecans and pecan
17 products;

18 (6) the cooperative development, financing, and
19 implementation of a coordinated national program of
20 pecan promotion, research, and consumer information
21 are necessary to maintain and expand existing markets
22 and develop new markets for pecans and pecan prod-
23 ucts; and

24 (7) pecans and pecan products move in interstate
25 and foreign commerce, and pecans and pecan products

1 that do not move in such channels of commerce direct-
2 ly burden or affect interstate commerce in pecans and
3 pecan products.

4 (b) POLICY.—It is declared to be the policy of Congress
5 that it is in the public interest to authorize the establishment,
6 through the exercise of the powers provided in this Act, of an
7 orderly procedure for developing, financing (through adequate
8 assessments on pecans produced or imported into the United
9 States), and carrying out an effective, continuous, coordinat-
10 ed program of promotion, research, and consumer informa-
11 tion designed to—

12 (1) strengthen the pecan industry's position in the
13 marketplace;

14 (2) maintain and expand existing domestic and
15 foreign markets and uses for pecans and pecan prod-
16 ucts; and

17 (3) develop new markets and uses for pecans and
18 pecan products.

19 (c) CONSTRUCTION.—Nothing in this Act may be con-
20 strued to provide for the control of production or otherwise
21 limit the right of any person to produce pecans.

22 **SEC. 3. DEFINITIONS.**

23 As used in this Act:

24 (1) BOARD.—The term "Board" means the Pecan
25 Marketing Board established in section 6(b).

5

1 (2) COMMERCE.—The term “commerce” means
2 interstate, foreign, or intrastate commerce.

3 (3) CONFLICT OF INTEREST.—The term “conflict
4 of interest” means a situation in which a member or
5 director has a direct or indirect financial interest in a
6 corporation, partnership, sole proprietorship or joint
7 venture dealing directly or indirectly with the Board.

8 (4) DEPARTMENT.—The term “Department”
9 means the Department of Agriculture.

10 (5) DISTRICT.—The term “district” means a geo-
11 graphical area of the United States, as determined by
12 the Board and approved by the Secretary, in which
13 there is produced approximately one-fourth of the
14 volume of pecans produced in the United States.

15 (6) FIRST HANDLER.—The term “first handler”
16 means the first person who buys or takes possession of
17 pecans from a grower for marketing. If a grower mar-
18 kets pecans or pecan products directly to consumers,
19 such grower shall be considered the first handler with
20 respect to pecans grown by such grower.

21 (7) GROWER.—The term “grower” means any
22 person engaged in the production and sale of pecans in
23 the United States who owns, or who shares the owner-
24 ship and risk of loss of, such pecans.

1 (8) GROWER-SHELLER.—The term “grower-
2 sheller” means a person who—

3 (A) shells pecans, or has pecans shelled for
4 such person, in the continental United States; and

5 (B) during the immediately previous year,
6 grew 50 percent or more of the pecans such
7 person shelled or had shelled for such person.

8 (9) HANDLE.—The term “handle” means receipt
9 of in-shell pecans by a sheller or first handler, includ-
10 ing pecans produced by such sheller or first handler.

11 (10) IMPORTER.—The term “importer” means
12 any person who imports pecans or pecan products from
13 outside of the United States for sale in the United
14 States.

15 (11) IN-SHELL PECAN.—The term “in-shell
16 pecan” means a pecan that has a shell that has not
17 been removed.

18 (12) TO MARKET.—The term “to market” means
19 to sell or offer to dispose of pecans or pecan products
20 in any channel of commerce.

21 (13) MARKETING YEAR.—The term “marketing
22 year” means the 12-month period from October 1
23 through September 30 or such other period of the time
24 as may be recommended by the Board and established
25 by the Secretary.

1 (14) MEMBER.—The term “member” means a
2 member of the Board.

3 (15) ORDER.—The term “order” means an order
4 issued under section 4.

5 (16) PECAN.—The term “pecan” means the nut
6 of the pecan tree *carya illinoensis*.

7 (17) PECAN PRODUCT.—The term “pecan prod-
8 uct” means an edible product produced in whole or
9 part from pecans.

10 (18) PERSON.—The term “person” has the mean-
11 ing given such term in section 1 of title 1 of the
12 United States Code.

13 (19) PROMOTION.—The term “promotion” means
14 any action taken by the Board, pursuant to this Act, to
15 present a favorable image of pecans to the public with
16 the express intent of improving the competitive position
17 of pecans in the marketplace and stimulating sales of
18 pecans, including paid advertising.

19 (20) RESEARCH.—The term “research” means
20 any type of test, study, or analysis designed to advance
21 the image, desirability, usage, marketability, produc-
22 tion, product development, or quality of pecans or
23 pecan products.

24 (21) SECRETARY.—The term “Secretary” means
25 the Secretary of Agriculture.

1 (22) SHELL.—The term “shell” means to remove
2 the shell from an inshell pecan.

3 (23) SHELLED PECAN.—The term “shelled
4 pecan” means a pecan kernel, or portion of a kernel,
5 after the pecan shell has been removed.

6 (24) SHELLER.—The term “sheller” means any
7 person who—

8 (A) shells pecans or has pecans shelled for
9 the account of such person; and

10 (B) during the immediately previous year,
11 purchased more than 50 percent of the pecans
12 such person shelled or had shelled for such
13 account.

14 (25) STATE.—The term “State” means any of
15 the several States, the District of Columbia, the Com-
16 monwealth of Puerto Rico, or any of the territories and
17 possessions of the United States.

18 (26) UNITED STATES.—The term “United
19 States” means collectively the several States, the Dis-
20 trict of Columbia, the Commonwealth of Puerto Rico,
21 and the territories and possessions of the United
22 States.

23 SEC. 4. ISSUANCE OF ORDERS.

24 (a) IN GENERAL.—To effectuate the declared policy of
25 section 2(b), the Secretary shall, subject to this Act, issue

1 and from time to time amend, orders applicable to growers,
2 grower-shellors, shellors, first handlers, and importers of
3 pecans. Any such order shall be national in scope. Not more
4 than one order shall be in effect under this Act at any one
5 time.

6 (b) PROCEDURE.—

7 (1) PROPOSAL FOR ISSUANCE OF ORDER.—The
8 Secretary may propose the issuance of an order under
9 this Act, or an association of pecan growers or grower-
10 shellors or any other person that will be affected by
11 this Act request the issuance of, and submit a pro-
12 posal for, such order.

13 (2) PROPOSED ORDER.—Not later than 60 days
14 after the receipt of a request and proposal by an inter-
15 ested person for an order, or when the Secretary deter-
16 mines to propose an order, the Secretary shall publish
17 a proposed order and give due notice and opportunity
18 for public comment on the proposed order.

19 (3) ISSUANCE OF ORDER.—After notice and op-
20 portunity for public comment are given, as provided in
21 paragraph (2), the Secretary shall issue an order,
22 taking into consideration the comments received and
23 including in the order provisions necessary to ensure
24 that the order is in conformity with the requirements of
25 this Act.

1 (4) EFFECTIVE DATE OF ORDER.—Such order
2 shall be issued and become effective not later than 120
3 days following publication of the proposed order.

4 (c) AMENDMENTS.—The Secretary, from time to time,
5 may amend any order issued under this section, consistent
6 with the requirement of section 14.

7 SEC. 5. REGULATIONS.

8 The Secretary may issue such regulations as are neces-
9 sary to carry out this Act.

10 SEC. 6. REQUIRED TERMS IN ORDERS.

11 (a) IN GENERAL.—Each order issued under this Act
12 shall contain the terms and conditions prescribed in this
13 section.

14 (b) PECAN MARKETING BOARD.—

15 (1) ESTABLISHMENT.—The order shall establish
16 a Pecan Marketing Board to carry out the program re-
17 ferred to in section 2(b).

18 (2) SERVICE TO ENTIRE INDUSTRY.—The Board
19 shall carry out programs and projects that will provide
20 maximum benefit to the pecan industry in all parts of
21 the United States and only generically promote pecans.

22 (3) BOARD MEMBERSHIP.—The Board shall con-
23 sist of 15 members, including—

24 (A) eight members who are growers;

25 (B) four members who are shellers;

1 (C) one member who is a first handler and
2 who derives over 50 percent of the member's
3 gross income from buying and selling pecans;

4 (D) one member who is an importer of
5 pecans into the United States, nominated by the
6 Board;

7 (E) one member representing the general
8 public, appointed by the Board; and

9 (F) at the option of the Board, a consultant
10 or advisor representing the views of pecan pro-
11 ducers in a country other than the United States
12 who may be chosen to attend Board functions as
13 a nonvoting member.

14 (4) REPRESENTATION OF MEMBERS.—

15 (A) GROWER REPRESENTATIVES.—Of the
16 growers referred to in paragraph (3)(A), two
17 members shall be from each district.

18 (B) SHELLER REPRESENTATIVES.—Of the
19 shellers referred to in paragraph (3)(B)—

20 (i) two members shall be selected from
21 among shellers whose place of residence is
22 east of the Mississippi River; and

23 (ii) two members shall be selected from
24 among shellers whose place of residence is
25 west of the Mississippi River.

1 (C) FIRST HANDLER REPRESENTATIVE.—

2 The first handler representative on the Board re-
3 ferred to in paragraph (3)(C) shall be selected
4 from among first handlers whose place of resi-
5 dence is in a district.

6 (D) IMPORTER REPRESENTATIVE.—The im-
7 porter representative on the Board referred to in
8 paragraph (3)(D) shall be an individual who im-
9 ports pecans into the United States.

10 (E) PUBLIC REPRESENTATIVE.—The public
11 representative on the Board referred to in para-
12 graph (3)(E) shall not be a grower, grower-
13 sheller, sheller, or first handler.

14 (5) ALTERNATE FOR EACH MEMBER.—Each
15 member of the Board shall have an alternate with the
16 same qualifications as the member such alternate
17 would replace.

18 (6) LIMITATION ON STATE RESIDENCE.—There
19 shall be no more than one member from each State in
20 each district, except that the State of Georgia may
21 have two growers from such State representing the
22 district that it is in.

23 (7) MODIFYING BOARD MEMBERSHIP.—In ac-
24 cordance with regulations approved by the Secretary,

1 at least once each 3 years and not more than once
2 each 2 years, the Board shall—

3 (A) review the geographic distribution of
4 pecan production throughout the United States
5 and the volume of imported pecans and pecan
6 products; and

7 (B) if warranted, recommend to the Secre-
8 tary that the Secretary reapportion a district in
9 order to reflect the geographic distribution of
10 pecan production and the quantity of imported
11 pecan or pecan products.

12 (8) SELECTION PROCESS FOR MEMBERS.—

13 (A) PUBLICITY.—The Board shall give rea-
14 sonable publicity to the industry for nomination of
15 persons interested in being nominated for Board
16 membership.

17 (B) ELIGIBILITY.—Each grower, sheller,
18 first handler, and importer shall be eligible to vote
19 for members who represent that class of members
20 on the Board.

21 (C) SELECTION OF NOMINEES.—Each
22 person referred to in subparagraph (B) shall have
23 one vote. The two eligible candidates receiving
24 the largest number of votes cast for each Board

1 position for each class of members shall be the
2 nominees for such position.

3 (D) CERTIFICATION.—Except for the estab-
4 lishment of the initial Board, the nominations
5 made under subparagraph (C) shall be certified by
6 the Board and submitted to the Secretary no later
7 than May 1 preceding the commencement of the
8 term of office for Board membership, as estab-
9 lished in paragraph (9).

10 (E) APPOINTMENT.—To each vacant Board
11 position, the Secretary shall appoint 1 individual
12 from among the nominees certified and submitted
13 under subparagraph (D).

14 (F) REJECTION OF NOMINEES.—The Secre-
15 tary may reject any nominee submitted under sub-
16 paragraph (D). If there are insufficient nominees
17 from which to appoint members to the Board as a
18 result of the Secretary's rejecting such nominees,
19 additional nominees shall be submitted to the Sec-
20 retary in the same manner.

21 (G) INITIAL BOARD.—The Secretary shall
22 establish an initial Board from among nominations
23 solicited by the Secretary. For the purpose of ob-
24 taining nominations for the initial Board, the Sec-
25 retary shall perform the functions of the Board

1 under this subsection as the Secretary determines
2 necessary and appropriate.

3 (9) TERMS OF OFFICE.—

4 (A) IN GENERAL.—The members of the
5 Board shall serve for a term of 3 years, except
6 that the members appointed to the initial Board
7 established under paragraph (8)(G) shall serve,
8 proportionately, for terms of 1, 2, and 3 years, as
9 determined by the Secretary.

10 (B) TERMINATION OF TERMS.—Notwith-
11 standing subparagraph (C), each member shall
12 continue to serve until a successor is appointed by
13 the Secretary.

14 (C) LIMITATION ON TERMS.—No individual
15 shall serve more than 2 consecutive 3-year terms
16 as a member.

17 (D) VACANCIES.—

18 (i) SUBMITTING NOMINATIONS.—To fill
19 any vacancy created by the death, removal,
20 resignation, or disqualification of any member
21 of the Board, the Secretary shall request
22 that at least 2 eligible nominations for a suc-
23 cessor for each such vacancy be submitted by
24 the Board in the manner provided in para-
25 graph (8).

1 (ii) LACK OF NOMINATIONS.—If at
2 least 2 eligible nominations are not submitted
3 under clause (i), the Secretary shall deter-
4 mine the manner of submission of nomina-
5 tions for the vacancy.

6 (10) COMPENSATION.—A member of the Board
7 shall serve without compensation, but shall be reim-
8 bursed for necessary and reasonable expenses incurred
9 in the performance of duties for and approved by the
10 Board.

11 (c) POWERS AND DUTIES OF THE BOARD.—The order
12 shall define the powers and duties of the Board, which shall
13 include the power and duty—

14 (1) to administer the order in accordance with its
15 terms and conditions;

16 (2) to make regulations to effectuate the terms
17 and conditions of the order;

18 (3) to meet, organize, and select from among
19 members of the Board a chairperson, other officers,
20 and committees and subcommittees, as the Board de-
21 termines appropriate;

22 (4) to establish working committees of persons
23 other than Board members;

24 (5) to employ such persons, other than Board
25 members, as the Board considers necessary and to de-

1 terminate the compensation and define the duties of such
2 persons;

3 (6) to prepare and submit for the approval of the
4 Secretary, prior to the beginning of each fiscal period,
5 a recommended rate of assessment under section 8,
6 and a fiscal period budget of the anticipated expenses
7 in the administration of the order, including the proba-
8 ble costs of all programs and projects;

9 (7) to develop programs and projects, subject to
10 subsection (d);

11 (8) to enter into contracts or agreements, subject
12 to subsection (e), to develop and carry out programs or
13 projects of research and development;

14 (9) to carry out research and development, promo-
15 tion, and to pay the costs of such projects with assess-
16 ments collected pursuant to section 8;

17 (10) to keep minutes, books, and records that re-
18 flect the actions and transactions of the Board, and
19 promptly report minutes of each Board meeting to the
20 Secretary;

21 (11) to appoint and convene, from time to time,
22 working committees comprised of growers, grower-
23 shellers, first handlers, and the public to assist in the
24 development of research and promotion programs for
25 pecans and pecan products;

1 (12) to refrain from engaging in any action that
2 would be a conflict of interest or any action undertaken
3 for the purpose of influencing any legislation or gov-
4 ernmental action, other than recommending to the Sec-
5 retary amendments to the order;

6 (13) to not engage in any advertising that may be
7 false or misleading;

8 (14) to invest, pending disbursement under a plan
9 or project, funds collected through assessments author-
10 ized under this Act, only in—

11 (A) obligations of the United States or any
12 agency thereof;

13 (B) general obligations of any State or any
14 political subdivision thereof;

15 (C) any interest-bearing account or certificate
16 of deposit of a bank that is a member of the Fed-
17 eral Reserve System; or

18 (D) obligations fully guaranteed as to princi-
19 pal and interest by the United States,
20 except that income from any such invested funds may
21 be used for any purpose for which the invested funds
22 may be used;

23 (15) to receive, investigate, and report to the Sec-
24 retary complaints of violations of the order;

1 (16) to furnish the Secretary with such informa-
2 tion as the Secretary may request;

3 (17) to recommend to the Secretary amendments
4 to the order; and

5 (18) to develop and recommend to the Secretary
6 for approval such rules and regulations as may be nec-
7 essary for the development and execution of programs
8 or projects to carry out the order.

9 (d) PROGRAMS AND BUDGETS.—

10 (1) SUBMISSION TO SECRETARY.—The order
11 shall provide that the Board shall submit to the Secre-
12 tary for approval any program or project of promotion,
13 research, consumer information, or industry informa-
14 tion.

15 (2) BUDGETS.—The order shall require the
16 Board, prior to the beginning of each fiscal year, or as
17 may be necessary after the beginning of such fiscal
18 year, to submit to the Secretary for approval budgets
19 of its anticipated expenses (including reimbursements
20 under section (b)(10)) and disbursements in the imple-
21 mentation of the order, including projected costs of
22 promotion, research, development, consumer informa-
23 tion, and industry information programs and projects.

24 (3) INCURRING EXPENSES.—The Board may
25 incur such expenses for the research or promotion of

1 pecans, and other expenses for the administration,
2 maintenance, and functioning of the Board as may be
3 authorized by the Secretary, including any implementa-
4 tion, administrative, and referendum costs incurred by
5 the Department.

6 (4) PAYING EXPENSES.—The funds to cover the
7 expenses referred to in paragraph (3) shall be paid by
8 the Board from assessments collected under section 8
9 or funds borrowed pursuant to paragraph (5).

10 (5) AUTHORITY TO BORROW.—In order to meet
11 the expenses referred to in paragraph (3), the Board
12 shall have the authority to borrow funds, as approved
13 by the Secretary, for capital outlays and startup costs.

14 (6) LIMITATION ON SPENDING.—Effective on the
15 date that is 3 years after the date of the establishment
16 of the Board, the Board shall not spend in excess of 20
17 percent of the assessments collected under section 10
18 for administration of the Board.

19 (e) CONTRACTS AND AGREEMENTS.—

20 (1) IN GENERAL.—To ensure efficient use of
21 funds, the order shall provide that the Board may enter
22 into contracts or agreements for the implementation
23 and carrying out of plans or projects of pecan promo-
24 tion, research, consumer information, or industry infor-
25 mation, including contracts with grower and grower-

1 sheller organizations, and for the payment of the cost
2 thereof with funds received by the Board under the
3 order.

4 (2) REQUIREMENTS.—Any such contract or
5 agreement shall provide that—

6 (A) the contracting party shall develop and
7 submit to the Board a plan or project together
8 with a budget or budgets that shall show estimat-
9 ed costs to be incurred for such plan or project;

10 (B) the plan or project shall become effective
11 on the approval of the Secretary; and

12 (C) the contracting party shall keep accurate
13 records of all of its transactions, account for funds
14 received and expended, make periodic reports to
15 the Board of activities conducted, and make such
16 other reports as the Board or the Secretary may
17 require.

18 (3) GROWER AND GROWER-SHELLER ORGANIZA-
19 TIONS.—The order shall provide that the Board may
20 contract with grower and grower-sheller organizations
21 for any other services. Any such contract shall include
22 provisions comparable to those required by paragraph
23 (2).

24 (f) BOOKS AND RECORDS OF BOARD.—

1 (1) IN GENERAL.—The order shall require the
2 Board to—

3 (A) maintain such books and records (which
4 shall be available to the Secretary for inspection
5 and audit) as the Secretary may prescribe;

6 (B) prepare and submit to the Secretary,
7 from time to time, such reports as the Secretary
8 may prescribe; and

9 (C) account for the receipt and disbursement
10 of all funds entrusted to the Board.

11 (2) AUDITS.—The Board shall cause its books
12 and records to be audited by an independent auditor at
13 the end of each fiscal year, and a report of such audit
14 to be submitted to the Secretary.

15 (g) PROHIBITION.—No funds received by the Board
16 under this Act shall in any manner be used for the purpose of
17 influencing legislation or governmental action, other than
18 recommending to the Secretary amendments to the order.

19 (h) BOOKS AND RECORDS.—

20 (1) IN GENERAL.—The order shall require that
21 each first handler, grower-sheller, or importer shall—

22 (A) maintain and submit to the Board any
23 reports considered necessary by the Secretary to
24 ensure compliance with this Act; and

1 (B) make available during normal business
2 hours, for inspection by employees of the Board or
3 Secretary, such books and records as are neces-
4 sary to carry out this Act, including such records
5 as are necessary to verify any required reports.

6 (2) TIME REQUIREMENT.—The records required
7 under paragraph (1) shall be maintained for 2 years
8 beyond the fiscal period of the applicability of such
9 records.

10 (3) OTHER INFORMATION.—The Secretary shall
11 authorize the use under this Act of information regard-
12 ing first handlers, grower-shellors, and importers that
13 may be accumulated under a law or regulation other
14 than this Act or regulations under this Act.

15 (4) CONFIDENTIALITY.—

16 (A) IN GENERAL.—Except as provided in
17 subparagraph (B), all information obtained from
18 books, records, or reports required to be main-
19 tained under paragraph (1) shall be kept confiden-
20 tial, and shall not be disclosed to the public by
21 any person.

22 (B) DISCLOSURE.—Information referred to
23 in subparagraph (A) may be disclosed to the
24 public only if—

1 (i) the Secretary considers the informa-
2 tion relevant;

3 (ii) the information is revealed in a suit
4 or administrative hearing brought at the di-
5 rection or on the request of the Secretary or
6 to which the Secretary or any officer of the
7 Department is a party; and

8 (iii) the information relates to this Act.

9 (C) MISCONDUCT.—Any disclosure of confi-
10 dential information in violation of subparagraph
11 (A) by any Board member or employee of the
12 Board, except as required by other law or allowed
13 under subparagraph (B), shall be considered a vio-
14 lation of this Act.

15 (D) GENERAL STATEMENTS.—Nothing in
16 this paragraph shall prohibit the issuance of gen-
17 eral statements based on reports of a number of
18 first-handlers, grower-shellors, or importers sub-
19 ject to the order if such statements do not identify
20 the information furnished by any person.

21 (5) AVAILABILITY OF INFORMATION.—

22 (A) EXCEPTION.—Except as provided in
23 section 12, information obtained under this Act
24 may be made available to another agency of the
25 Federal Government for a civil or criminal law

1 enforcement activity if the activity is authorized
2 by law and if the head of the agency has made a
3 written request to the Secretary specifying the
4 particular information desired and the law en-
5 forcement activity for which the information is
6 sought.

7 (B) PENALTY.—Any person violating this
8 subsection, on conviction, shall be subject to a
9 fine of not more than \$1,000 or to imprisonment
10 for not more than 1 year, or both, and if an offi-
11 cer or employee of the Board or the Department,
12 shall be removed from office.

13 (6) WITHHOLDING INFORMATION.—Nothing in
14 this subsection shall authorize the Secretary to with-
15 hold information from a committee or subcommittee of
16 Congress.

17 (i) OTHER TERMS AND CONDITIONS.—The order also
18 shall contain such terms and conditions, not inconsistent with
19 this Act, as determined necessary by the Secretary to effect-
20 ate this Act.

21 SEC. 7. PERMISSIVE TERMS IN ORDERS.

22 (a) IN GENERAL.—An order issued pursuant to this Act
23 may contain one or more of the terms and conditions con-
24 tained in this section.

1 (b) EXEMPTIONS.—The order may provide authority to
2 exempt from the order pecans used for nonfood uses, and
3 authority for the Board to require satisfactory safeguards
4 against improper uses of such exemptions.

5 (c) DIFFERENT PAYMENT AND REPORTING SCHED-
6 ULES.—The order may provide authority to designate differ-
7 ent payment and reporting schedules for growers, grower-
8 shellers, shellers, and importers to recognize differences in
9 marketing practices and procedures utilized in different pro-
10 duction areas.

11 (d) PROMOTION.—The order may provide for the estab-
12 lishment, issuance, effectuation, and administration of appro-
13 priate programs or projects for the promotion of pecans and
14 pecan products and for the disbursement of necessary funds
15 for such purposes, except that—

16 (1) any such program or project shall be directed
17 toward increasing the general demand for pecans and
18 pecan products; and

19 (2) such promotional activities shall comply with
20 other restrictions on the use of funds that are estab-
21 lished under this Act.

22 (e) RESEARCH AND DEVELOPMENT.—The order may
23 provide for establishing and carrying on research and devel-
24 opment projects and studies to the end that the marketing
25 and utilization of pecans and pecan products may be encour-

1 aged, expanded, improved, or made more efficient, and for
2 the disbursement of necessary funds for such purposes.

3 (f) RESERVE FUNDS.—The order may provide authority
4 to accumulate reserve funds from assessments collected pur-
5 suant to this Act, to permit an effective and continuous co-
6 ordinated program of research, development, and promotion
7 in years when the production and assessment income may be
8 reduced, except that the total reserve fund may not exceed
9 the amount budgeted for the operation of the order for 2
10 years.

11 (g) FOREIGN MARKETS.—The order may provide au-
12 thority to use funds collected under this Act, with the ap-
13 proval of the Secretary, for the development and expansion of
14 pecan and pecan product sales in foreign markets.

15 (h) OTHER TERMS.—The order may contain such other
16 terms and conditions incidental to and not inconsistent with
17 the terms and conditions specified in this Act that are neces-
18 sary to effectuate the provisions of the order.

19 SEC. 8. ASSESSMENTS.

20 (a) IN GENERAL.—During the effective period of an
21 order issued pursuant to this Act, assessments shall be—

22 (1) levied on all pecans produced in, and all
23 pecans and pecan products imported into, the United
24 States and marketed; and

1 (2) deducted from the payment made to a grower
2 for all pecans sold to a first handler.

3 (b) **LIMITATION ON ASSESSMENTS.**—No more than one
4 assessment may be assessed under subsection (a) on a first
5 handler or importer, for any lot of pecans handled.

6 (c) **REMITTING ASSESSMENTS.**—

7 (1) **IN GENERAL.**—Assessments required under
8 subsection (a) shall be remitted to the Board by—

9 (A) a first handler; and

10 (B) an importer.

11 (2) **TIMES TO REMIT ASSESSMENT.**—

12 (A) **FIRST HANDLERS.**—Each first handler
13 who is not a grower-sheller and who is required
14 to remit an assessment under paragraph (1) shall
15 remit such assessment to the Board no later than
16 the last day of the month following the month
17 that the pecans being assessed were purchased or
18 marketed by such first handler.

19 (B) **GROWER-SHELLERS.**—Each first handler
20 who is a grower-sheller and who is required to
21 remit an assessment under paragraph (1) shall
22 remit such assessment to the Board, to the extent
23 practicable, in payments of one-third of the total
24 annual amount of such assessment due to the
25 Board on March 31, June 30, and September 30,

1 or such dates as may be recommended by the
2 Board and approved by the Secretary, during the
3 fiscal year that the pecans being assessed were
4 harvested.

5 (C) IMPORTERS.—Importers of pecans into
6 the United States shall pay the assessment at the
7 time the pecans or pecan products enter the
8 United States and shall remit such assessment to
9 the Board.

10 (d) ASSESSMENT RATE.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), assessment rates shall be recommended by
13 the Board and approved by the Secretary, except that
14 the maximum assessment shall not exceed—

15 (A) during the period commencing on the ef-
16 fective date of the issuance of the order and
17 ending on the date the referendum is conducted
18 under section 12(a), one-half cent per pound for
19 in-shell pecans as determined by the Board and
20 approved by the Secretary; and

21 (B) after such period, 2 cents per pound for
22 in-shell pecans.

23 (2) ADJUSTING RATE FOR OUT-OF-SHELL
24 PECANS.—The rate of assessment of shelled pecans

1 shall be twice the rate established for in-shell pecans
2 pursuant to paragraph (1).

3 (3) SPECIAL STATE ASSESSMENT.—In addition
4 to the assessment rates imposed under paragraphs (1)
5 and (2), if authorized by State law, a one-quarter cent
6 special State assessment may be remitted to the Board
7 in a manner prescribed by the Secretary for the pur-
8 pose of utilizing such funds by a State pecan marketing
9 board, or its equivalent as determined by the Secre-
10 tary, for research projects to promote pecans and
11 pecan products conducted pursuant to State law.

12 (e) LATE-PAYMENT CHARGE.—

13 (1) IN GENERAL.—There shall be a late-payment
14 charge imposed on any person who fails to remit, on or
15 before the due date established by the Board under
16 subsection (c)(2), to the Board the total amount for
17 which such person is liable.

18 (2) AMOUNT OF CHARGE.—The amount of the
19 late-payment charge imposed under paragraph (1) shall
20 be prescribed by the Board with the approval of the
21 Secretary.

22 (f) REFUND OF ASSESSMENTS FROM ESCROW AC-
23 COUNT.—

24 (1) ESTABLISHMENT OF ESCROW ACCOUNT.—

25 During the period beginning on the effective date of an

1 order and ending on the date the referendum is con-
2 ducted under section 12(a), the Board shall—

3 (A) establish an escrow account to be used
4 for assessment refunds; and

5 (B) place funds in such account in accord-
6 ance with paragraph (2).

7 (2) PLACEMENT OF FUNDS IN ACCOUNT.—The
8 Board shall place in such account, from assessments
9 collected during the period referred to in paragraph (1),
10 an amount equal to the product obtained by multiply-
11 ing the total amount of assessments collected during
12 such period by 10 percent.

13 (3) RIGHT TO RECEIVE REFUND.—Subject to
14 paragraphs (4), (5), and (6), any grower, grower-shell-
15 er, or importer shall have the right to demand and re-
16 ceive from the Board a refund of assessments paid by
17 or on behalf of such grower, grower-sheller, or import-
18 er during the period referred to in paragraph (1) if—

19 (A) such grower, grower-sheller, or importer
20 is required to pay such assessments;

21 (B) such grower, grower-sheller, or importer
22 does not support the program established under
23 this Act; and

24 (C) the order is not approved pursuant to the
25 referendum conducted under section 12(a).

1 (4) FORM OF DEMAND.—Such demand shall be
2 made in accordance with regulations, on a form, and
3 within a time period prescribed by the Board.

4 (5) MAKING OF REFUND.—Such refund shall be
5 made on submission of proof satisfactory to the Board
6 that such grower, grower-sheller, or importer paid the
7 assessment for which refund is demanded.

8 (6) PRORATION.—If—

9 (A) the amount in the escrow account re-
10 quired by paragraph (1) is not sufficient to refund
11 the total amount of assessments demanded by eli-
12 gible growers, grower-shellors, or importers; and

13 (B) the order is not approved pursuant to the
14 referendum conducted under section 12(a);
15 the Board shall prorate the amount of such refunds
16 among all eligible growers, grower-shellors, and im-
17 porters who demand such refund.

18 (7) PROGRAM APPROVED.—If the order is ap-
19 proved pursuant to the referendum conducted under
20 section 12(a), all funds in the escrow account shall be
21 returned to the Board for use by the Board.

22 SEC. 9. PETITION AND REVIEW.

23 (a) PETITION.—

1 (1) IN GENERAL.—A person subject to an order
2 issued under this Act may file with the Secretary a
3 petition—

4 (A) stating that the order, any provision of
5 the order, or any obligation imposed in connection
6 with the order is not in accordance with law; and

7 (B) requesting a modification of the order or
8 an exemption from the order.

9 (2) HEARINGS.—The petitioner shall be given the
10 opportunity for a hearing on the petition, on the record
11 and in accordance with regulations issued by the
12 Secretary.

13 (3) RULING.—After such hearing, the Secretary
14 shall make a ruling on the petition, which shall be final
15 if in accordance with law.

16 (b) REVIEW.—

17 (1) COMMENCEMENT OF ACTION.—The district
18 courts of the United States in any district in which
19 such person is an inhabitant or carries on business are
20 vested with jurisdiction to review such ruling, if a com-
21 plaint for that purpose is filed within 20 days after the
22 date of the entry of such ruling.

23 (2) PROCESS.—Service of process in such pro-
24 ceedings may be had on the Secretary by delivering a

1 copy of the complaint to the Secretary, under such reg-
2 ulations as the Secretary may prescribe.

3 (3) REMANDS.—If the court determines that such
4 ruling is not in accordance with law, the court shall
5 remand such proceedings to the Secretary with
6 directions—

7 (A) to make such ruling as the court shall
8 determine to be in accordance with law; or

9 (B) to take such further proceedings as, in its
10 opinion, the law requires.

11 (4) ENFORCEMENT.—The pendency of proceed-
12 ings instituted under subsection (a) shall not impede,
13 hinder, or delay the Attorney General or the Secretary
14 from taking any action under section 10.

15 SEC. 10. ENFORCEMENT.

16 (a) JURISDICTION.—The district courts of the United
17 States are vested with jurisdiction specifically to enforce, and
18 to prevent and restrain any person from violating, this Act or
19 any order, rule, or regulation issued under this Act.

20 (b) REFERRAL TO ATTORNEY GENERAL.—The facts
21 relating to any civil action authorized to be brought under
22 this section, other than subsection (g), shall be referred to the
23 Attorney General for appropriate action, except that nothing
24 in this Act shall be construed as requiring the Secretary to
25 refer to the Attorney General a violation of this Act or any

1 order, rule, or regulation issued under this Act if the Secre-
2 tary believes that the administration and enforcement of this
3 Act would be adequately served by administrative action
4 under subsection (c) or suitable written notice or warning to
5 any person committing the violation.

6 (c) CIVIL PENALTIES AND ORDERS.—

7 (1) CIVIL PENALTIES.—Any person who violates
8 any provision of this Act or any order, rule, or regula-
9 tion issued under this Act, or who fails or refuses to
10 pay, collect, or remit any assessment or late-payment
11 charge required of the person under this Act or any
12 order, rule, or regulation issued under this Act, may be
13 assessed a civil penalty by the Secretary of not less
14 than \$1,000 nor more than \$10,000 for each such vio-
15 lation. Each violation shall be considered as a separate
16 offense.

17 (2) CEASE-AND-DESIST ORDERS.—In addition to,
18 or in lieu of, such civil penalty, the Secretary may
19 issue an order requiring such person to cease and
20 desist from continuing such violation.

21 (3) NOTICE AND HEARING.—No penalty shall be
22 assessed or cease-and-desist order issued unless such
23 person is given notice and opportunity for a hearing on
24 the record before the Secretary with respect to such
25 violation.

1 (4) FINALITY.—The order of the Secretary as-
2 sessing a penalty or imposing a cease-and-desist order
3 shall be final and conclusive unless the affected person
4 files an appeal from the Secretary's order in accord-
5 ance with subsection (e).

6 (e) REVIEW BY COURT OF APPEALS.—

7 (1) COMMENCEMENT OF ACTION.—Any person
8 against whom a civil penalty assessed or cease-and-
9 desist order issued under subsection (d) may obtain
10 review of the penalty or order by—

11 (A) filing, within the 30-day period beginning
12 on the date such penalty is assessed or order
13 issued, a notice of appeal in—

14 (i) the court of appeals of the United
15 States for the circuit in which the person re-
16 sides or carries on business; or

17 (ii) the United States Court of Appeals
18 for the District of Columbia Circuit; and

19 (B) simultaneously sending a copy of the
20 notice by certified mail to the Secretary.

21 (2) RECORD.—The Secretary shall promptly file
22 in the court a certified copy of the record on which
23 such violation was found.

1 (3) STANDARD OF REVIEW.—The findings of fact
2 of the Secretary shall be set aside only if found to be
3 unsupported by substantial evidence.

4 (f) FAILURE TO OBEY ORDERS.—Any person who fails
5 to obey a cease-and-desist order after the order has become
6 final and unappealable, or after the appropriate court of ap-
7 peals has entered a final judgment in favor of the Secretary,
8 shall be subject to a civil penalty assessed by the Secretary,
9 after opportunity for a hearing on the record and for judicial
10 review under the procedures specified in subsections (d) and
11 (e) of not more than \$1,000 for each offense. Each day
12 during which the failure continues shall be considered as a
13 separate offense.

14 (g) FAILURE TO PAY ASSESSMENTS.—If any person
15 fails to pay a civil penalty after it has become a final and
16 unappealable order issued by the Secretary, the Secretary
17 shall commence a civil action in an appropriate district court
18 of the United States to enforce such order. In such action,
19 the validity and appropriateness of such order imposing such
20 penalty shall not be subject to review.

21 SEC. 11. INVESTIGATIONS AND POWER TO SUBPOENA.

22 (a) IN GENERAL.—The Secretary may make such in-
23 vestigations as the Secretary considers necessary—

24 (1) to effectively carry out the responsibilities of
25 the Secretary under this Act; or

1 (2) to determine whether a person has engaged or
2 is engaging in any acts or practices that constitute a
3 violation of any provision of this Act, or any order,
4 rule, or regulation issued under this Act.

5 (b) ADMINISTRATION.—For the purpose of any such in-
6 vestigation, the Secretary may administer oaths and affirma-
7 tions, subpoena witnesses, compel their attendance, take evi-
8 dence, and require the production of any record that is rele-
9 vant to the inquiry.

10 (c) SUBPOENA.—Such attendance of witnesses and the
11 production of any such records may be required from any
12 place in the United States. In case of contumacy by, or refus-
13 al to obey a subpoena issued to, any person, the Secretary
14 may invoke the aid of any court of the United States within
15 the jurisdiction of which such investigation or proceeding is
16 carried on, or where such person resides or carries on busi-
17 ness, in requiring the attendance and testimony of witnesses
18 and the production of records. Such court may issue an order
19 requiring such person to appear before the Secretary, to
20 produce records, if so ordered, or to give testimony touching
21 the matter under investigation.

22 (d) CONTEMPT.—Any failure to obey such subpoena of
23 the court may be punished by such court as contempt thereof.

1 (e) PROCESS.—All process in any such case may be
2 served in the judicial district of which such person is an in-
3 habitant or wherever such person may be found.

4 (f) JURISDICTION.—The site of any hearings held under
5 this section shall be within the judicial district where such
6 person is an inhabitant or has a principal place of business.

7 SEC. 12. REQUIREMENT OF REFERENDUM.

8 (a) IN GENERAL.—Not later than 24 months after the
9 effective date of the order, the Secretary shall conduct a ref-
10 erendum among growers, grower-shellors, and importers,
11 who during a representative period determined by the Secre-
12 tary have been engaged in the production or importation of
13 pecans, for the purpose of ascertaining whether growers,
14 grower-shellors, and importers favor continuation, termina-
15 tion, or suspension of the order.

16 (b) OTHER REFERENDA.—

17 (1) IN GENERAL.—After the referendum required
18 under subsection (a), the Secretary shall hold a referen-
19 dum on request of the Board or 10 percent or more of
20 the total number of growers, grower-shellors, and im-
21 porters, to determine if growers, grower-shellors, and
22 importers favor the termination or suspension of the
23 order.

24 (2) SUSPENSION OR TERMINATION.—The Secre-
25 tary shall terminate or suspend such order, in accord-

1 ance with section 13(b), whenever the Secretary deter-
2 mines that such suspension or termination is favored by
3 a majority of those voting in a referendum.

4 (c) COSTS OF REFERENDUM.—The Secretary shall be
5 reimbursed from any assessments collected by the Board for
6 any expenses incurred by the Department in connection with
7 the conduct of any referendum under this Act, except for the
8 salaries of Government employees.

9 (d) MANNER.—

10 (1) IN GENERAL.—Referenda conducted pursuant
11 to this Act shall be conducted in such a manner as is
12 determined by the Secretary.

13 (2) ADVANCE REGISTRATION.—A grower,
14 grower-sheller, or importer who chooses to vote in any
15 referendum conducted under this Act shall register in
16 person prior to the voting period at the appropriate
17 local office of the Agricultural Stabilization and Con-
18 servation Service, as determined by the Secretary, for
19 such grower, grower-sheller, or importer after receiv-
20 ing notice under paragraph (4) from such office con-
21 cerning such referendum.

22 (3) VOTING.—A grower, grower-sheller, or im-
23 porter who votes in any referendum conducted under
24 this Act shall vote in person at the appropriate local

1 office of the Agricultural Stabilization and Conserva-
2 tion Service, as determined by the Secretary.

3 (4) NOTICE.—Each Agricultural Stabilization and
4 Conservation Service office shall notify all growers,
5 grower-shellors, and importers in the area of such
6 office, as determined by the Secretary, at least 30 days
7 prior to a referendum conducted under this Act. Such
8 notice shall explain the registration and voting proce-
9 dures established under this subsection.

10 SEC. 13. SUSPENSION OR TERMINATION OF ORDER.

11 (a) MANDATORY SUSPENSION OR TERMINATION.—The
12 Secretary shall, whenever the Secretary finds that the order
13 or any provision of the order obstructs or does not tend to
14 effectuate the declared policy of this Act, terminate or sus-
15 pend the operation of such order or provision.

16 (b) SUSPENSION OR TERMINATION.—If, as a result of
17 any referendum conducted under this Act, the Secretary de-
18 termines that suspension or termination of an order is favored
19 by a majority of the growers, grower-shellors, and importers
20 voting in the referendum, the Secretary shall—

21 (1) within 6 months after making such determina-
22 tion, suspend or terminate, as the case may be, collec-
23 tion of assessments under the order; and

1 (2) suspend or terminate, as the case may be, ac-
2 tivities under the order in an orderly manner as soon
3 as practicable.

4 SEC. 14. AMENDMENTS.

5 The provisions of this Act applicable to an order shall be
6 applicable to amendments to an order.

7 SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

8 (a) IN GENERAL.—There are authorized to be appropri-
9 ated for each fiscal year such sums as are necessary to carry
10 out this Act.

11 (b) ADMINISTRATIVE EXPENSES.—Funds appropriated
12 to carry out this Act shall not be available for payment of the
13 expenses or expenditures of the Board in administering any
14 provision of any order issued under this Act.

